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IN THE

Supreme Court of the United States

October Term 1965

NO. ....., ORIGINAL

STATE OF SOUTH CAROLINA, *Plaintiff*

v.

NICHOLAS deB. KATZENBACH,
Attorney General for the
United States, *Defendant*

MOTION FOR LEAVE TO FILE COMPLAINT

The State of South Carolina, by its Attorney General and its special counsel, asks leave of the Court to file its Complaint against Nicholas deB. Katzenbach, Attorney General of the United States submitted herewith, for the reasons stated therein and in the attached supporting brief.

DANIEL R. MCLEOD
Attorney General
State of South Carolina
DAVID W. ROBINSON
DAVID W. ROBINSON, II
Special Counsel

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NO. ....., ORIGINAL

STATE OF SOUTH CAROLINA, *Plaintiff*

v.

NICHOLAS deB. KATZENBACH,
Attorney General of the
United States, *Defendant*

COMPLAINT

The State of South Carolina, by its Attorney General, brings this action in equity against the defendant and for its cause of action states:

1. That the Plaintiff is a Sovereign State of the United States of America, was one of its founders and was an original party to the compact of Sovereign States known as the Constitution of the United States.

2. That the defendant is a resident and citizen of a State other than the Plaintiff and is presently serving as the Attorney General of the United States.

3. That the jurisdiction of this Court is invoked under Article III, §2, Clause 1 & 2 of the Constitution of the United States.

4. That as a part of her sovereign responsibility, the Plaintiff is charged with maintaining and preserving a representative government for her inhabitants, including

fair and reasonable election procedures and qualifications and prerequisites for the registration and voting of her citizens in the selection of their governmental officials and the resolution of major governmental issues, in the interest of better government for her inhabitants, all as confirmed and charged by her Constitution and laws and those of the United States of America.

5. That, as recognized and expressly provided by the Constitution of the United States, it is within the peculiar and special and exclusive province of the Plaintiff to prescribe and maintain reasonable and lawful registration and voting procedures, in the interest of the most qualified electorate to achieve the fairest and most capable government and governing officials for her inhabitants. That in this capacity the Plaintiff is *parens patriae* of her citizens as to *all* sovereigns to prevent the destruction or diiution of these processes by unconstitutional and unlawful means, federal or otherwise.

6. That, purporting to act under authority of the Fifteenth Amendment of the Constitution of the United States, the Congress of the United States enacted, and the President of the United States approved, on August 6, 1965 the "Voting Rights Act of 1965", Public Law 89-110, 89th Congress, S-1564, (hereinafter referred to as the "Act") which attempted to restrict and limit the powers of the Plaintiff and certain other Sovereign States. That in enacting and ratifying this Act, the Congress and the President of the United States specifically recognized and charged that the functions of regulating, maintaining and preserving reasonable voting and registration procedures fell within the particular and special province of the Sovereign States and that the Sovereign States as such had a justiciable interest in all questions arising under said Act or resulting from its enactment, falling within the area of voting and registration of their citizenry.

7. That this Court has recently recognized and established, in litigation involving other Sovereign States, that

the Plaintiff is charged with the duty and function of preserving to her inhabitants their right to participate in her governmental affairs and those of the United States government under an election system designed to insure equal and fair participation by her electorate, as constitutionally and lawfully determined; and that the Plaintiff, as a Sovereign State, is further charged with the prevention of any dilution or discrimination in the fair or equal participation of said electorate under its election system by any unconstitutional and unlawful means. That the Congress, under the Fifth Amendment of the Constitution of the United States, is constitutionally without power to enact legislation having the effect of diluting and weakening the weight or value of the vote of her constitutionally selected electorate, which this Court has recently specifically prohibited the Sovereign States from doing under the Fourteenth Amendment to the Constitution of the United States.

8. That this action is brought by the Plaintiff as a Sovereign State in her quasi-sovereign capacity to preserve to her inhabitants the most capable and just representative government through her election procedures; as a Sovereign *parens patriae* to preserve and maintain fair and reasonable registration and voter qualifications and procedures, to insure a qualified electorate and the most capable and just government for her inhabitants and to prevent the dilution of the vote of said electorate; as a Sovereign State charged by the Congress and the Executive Branch of the United States government under the Act with respect to her voting and registration procedures and whose justiciable interest is therein recognized by the Congress of the United States; and as a Sovereign State directed by this Court to prevent unconstitutional dilution of, or discrimination in, the right of her lawfully qualified electorate to participate in her governmental affairs.

9. That on November 3, 1964 the Plaintiff's inhabitants were registered and voted in the number and percentages shown in Exhibit A. attached hereto and incorporated as a part of this Complaint.

10. That the Act, particularly §§4, 5, 6(b), 11 and 12, arbitrarily, unconstitutionally and unlawfully in the particulars hereinafter set forth, attempts to restrict and prohibit the Plaintiff's right to exercise her sovereign power to prescribe fair and reasonable qualifications for registration of her electorate and the conduct of her elections, federal, state or local, solely because the Plaintiff maintains a fair and lawful literacy test as a prerequisite to the registration of her electorate and because certain of her registered voters failed to vote on November 3, 1964.

11. That, as administered, the Plaintiff's literacy test consists of the reading of a short, simple sentence of her Constitution and the completion by the citizen of an application form, a copy of which is attached hereto as Exhibit B and incorporated as a part of this Complaint.

12. That, in addition to her lawful and constitutional literacy test, the Plaintiff's Constitution and laws contain the following prerequisites to registration and voting, all of which materially affected the number and percentage of Plaintiff's inhabitants who participated in the election of November 3, 1964:

> "Article II, §3—Every male citizen of this State and of the United States 21 years of age and upwards, not laboring under the disabilities named in this Constitution possession the qualifications required by it, shall be an elector."
>
> "Article II, §4—Qualifications for suffrage shall be as follows:
>
> (a) Residence—Residence in the state for one year in the county for six months and in the polling precinct in which the elector offers to vote for three months; provided that ministers in charge of an organized church and teachers of public schools and the spouse of any person shall be entitled to vote after six months residence in the state, otherwise qualified (amended to shorten time in the state from two to one year, in the county from one year to six months and in the

precinct from four months to three months in 1963 See 1963 Stat. 53, p. 109.")

"(b) Registration—Registration, which shall provide for the enrollment of every elector once in ten years, and also an enrollment during each and every year of every elector not previously registered under the provisions of this Article."

"(c) Qualifications for registration up to January, 1898; list of registered voters.—Up to January 1st, 1898, all male persons of voting age applying for registration who can read any section in this Constitution submitted to them by the registration officer, or understand and explain it when read to them by the registration officer, shall be entitled to register and become electors. A separate record of all persons registered before January 1st, 1898, sworn to by the registration officers, shall be filed, one copy with the Clerk of Court and one in the office of the Secretary of State, on or before February 1st, 1898, and such persons shall remain during life qualified electors unless disqualified by the other provisions of this Article. The certificate of the Clerk of Court or Secretary of State shall be sufficient evidence to establish the right of said Citizens to any subsequent registration and the franchise under the limitations herein imposed.

"(d) Qualification for registration after January, 1898.—Any person who shall apply for registraiton after January 1st, 1898, if otherwise qualified, shall be registered; *Provided*, That he can both read and write any Section of this Constitution submitted to him by the registration officer, or can show that he owns, and has paid all taxes collectible during the previous year on, property in this State assessed at three hundred dollars ($300) or more.

"(e) Payment of taxes necessary for voting.—Eliminated by 1949 (46) 773; 1951 (47) 24.

"(f) Certificate of registration.—The General Assembly shall provide for issuing to each duly registered elector a certificate of registration, and shall provide for the renewal of such certificate when lost, mutilated or destroyed, if the applicant is still a qualified elector under the provisions of this Constitution, or if he has been registered as provided in subsection (c)."

"Article II, §6. Persons disqualified from voting.—The following persons are disqualified from being registered or voting:

First, Persons convicted of burglary, arson, obtaining goods or money under false pretenses, perjury, forgery, robbery, bribery, adultery, bigamy, wife-beating, house-breaking, receiving stolen goods, breach of trust with fraudulent intent, fornication, sodomy, incest, assault with intent to ravish, miscegnation, larceny, or crimes against the election laws: *Provided*, That the pardon of the Governor shall remove such disqualification. Second, Persons who are idiots, insane, paupers supported at the public expense, and persons confined in any public prison."

See South Carolina Code of Laws, 1962 §23-62.

13. That under her Constitution and laws, Article II, §4(b) of the Constitution of South Carolina and §23-67 of the South Carolina Code of Laws, 1962, Plaintiff's citizens are required to re-register or re-enroll every ten years to be eligible for continued voting, the most recent such re-registration or re-enrollment occurring in 1957, which re-registration or re-enrollment materially affected the number and percentage of Plaintiff's inhabitants who participated in the election of November 3, 1964.

14. That, in her recent history, the Plaintiff's citizens have selected their governmental officers, federal, state and local, in a one-party primary (Democratic) system, with said officials so nominated receiving no substantial opposition in Plaintiff's General Elections, with the result that many of the Plaintiff's citizens had never consistently

participated in her General Elections, which fact materially affected the number and percentage of Plaintiff's citizens who participated in the election of November 3, 1964, all as shown in Exhibits C-1 and 2, attached hereto and incorporated as a part of this Complaint.

15. That, in her recent history, the Plaintiff's inhabitants have maintained an economic level and, as a result, also an educational level substantially below those of the inhabitants of many other Sovereign States, which facts have materially affected the interests of her inhabitants in participating in her governmental affairs through her election procedure and thus materially affected the number and percentage of the Plaintiff's inhabitants who participated in the election of November 3, 1964, all as shown in Exhibits D-1 and 2, attached hereto and incorporated as a part of this Complaint. That the Court will take judicial notice that said economic and educational levels were, in large measure, the direct and proximate result of economic sanctions directed against the Plaintiff and her inhabitants and certain of her sister states and inhabitants in the past century, including as a principal factor, the discriminatory rail freight rate structure which was comparatively recently modified by Interstate Commerce Commission findings and action.

16. That the Act, particularly §§4, 5 and 6(b) arbitrarily and unconstitutionally fails to permit, in the determination of the applicability of its terms, consideration of the facts set forth above affecting the number and percentage of the Plaintiff's inhabitants who registered and voted in the election of November 3, 1964.

17. That all of the reported evidence presented to the Congress during its deliberations on the Act, including the repeated testimony of the Defendant, indicated that the administration of the Plaintiff's lawful literacy test has not, in her recent history, resulted in the systematic denial to any of her inhabitants of the right to vote on account of race, color or previous condition of servitude.

18. That none of the Plaintiff's appropriate governing officials have received any complaint from her inhabitants of any improper administration of her literacy test or its use to deny them the right to vote on account of race, color or previous condition of servitude, all as shown by the affidavits attached hereto as Exhibits E-1, 2 and 3, and incorporated as a part of this Complaint.

19. That the Plaintiff alleges in the language of the Act, that neither the Plaintiff nor her political subdivisions "... have engaged in the use of tests or devices for the purpose or with the effect of denying or abridging the right to vote on account of race or color..."; that any "... incidents of such use have been few in number and have been promptly and effectively corrected by State or local action..."; that "... the continuing effect of such incidents has been eliminated..."; and "... there is no reasonable probability of their recurrence in the future"; but that they are conclusively taken as having done so solely on the basis of artificial and irrebuttable presumption contained in the Act, the validity of which is challenged in this suit.

20. That on or before August 8, 1965 the Defendant sought to invoke the provisions of the Act with respect to Plaintiff, her political subdivisions, officials and inhabitants and to certain other Sovereign States and political subdivisions of other Sovereign States, as shown by the letter of an Assistant Attorney General dated August 8, 1965 and some enclosures, all of which are attached hereto and incorporated as a part of this Complaint as Exhibits F 1, 2 & 3.

21. That in addition to the Sovereign States and political subdivisions listed in Exhibit F 3, attached, the following subdivisions maintained literacy tests on November 1, 1964 and failed to vote 50% of their citizens over 21 years of age on November 3, 1964:

Elmore County, Idaho
Aroostook County, Maine

That no attempt has been made by the United States to invoke and apply the Act, particularly §§4, 5 and 6(b), as to these subdivisions.

22. That the Act, particularly §§4, 5 and 6(b) unconstitutionally violates the principles of Equality of Statehood, as embedded in the Constitution of the United States of America and reflected in the Fifth and Fourteenth Amendments to said Constitution, both as drawn and applied to the Plaintiff, her political subdivisions, officials and inhabitants, in the following particulars:

(a) By limiting the application of certain of its restrictions and prohibitions solely to States and political subdivisions voting its inhabitants below certain percentage quotas on November 3, 1964, the Act is effectively drawn so as to apply solely to the Plaintiff, her political subdivisions, officials and residents, and certain other Sovereign States, their political subdivisions, officials and residents, as if specifically named therein, rather than to all the Sovereign States of the Union, their political subdivisions, officials and citizens.

(b) The Act deprives the Plaintiff, her political subdivisions, officials and residents of the right to prescribe, as a qualification for the registration of her inhabitants for voting, fair, reasonable, lawful and constitutional literacy tests, but permits the right to certain other Sovereign States similarly situated.

(c) The Act deprives the Plaintiff, her political subdivisions, officials and residents of the right to amend or change its Constitution and laws, customs, standards, practices and procedures with respect to the voting and voter qualifications of her residents, and elections and voter registration in general, without first obtaining Federal approval, but permits that right to certain other Sovereign States, their political subdivisions, officials and inhabitants similarly situated.

(d) The Act applies to all of the Plaintiff's political subdivisions, even though some exceeded the registration

and voting percentage quotas provided in the Act, but fails to so apply to certain subdivisions of other states similarly situated.

(e) The Act has been applied to Plaintiff, her political subdivisions, officials and citizens and to certain other Sovereign States, their political subdivisions, officials and inhabitants, but not to certain subdivisions, officials and citizens of other Sovereign States covered by its terms and similarly situated.

(f) The Act presumes wrongful conduct in violation of the Fifteenth Amendment of the Constitution of the United States of America on the part of the Plaintiff, her political subdivisions, officials and citizens because of her inhabitants' record of voting on November 3, 1964, but fails to prescribe a like presumption for certain other Sovereign States, and political subdivisions with similar voting records.

(g) The Act deprives the Plaintiff, her political subdivisions, officials and citizens of the right to resort to her courts and those of the United States of America within her territories to determine the rights of her citizens to register and vote in federal, state and local elections, but permits said right to other Sovereign States and political subdivisions similarly situated.

(h) The Act creates an irrebuttable presumption that the Plaintiff, her political subdivisions, officials and inhabitants were guilty of the denial or abridgment of her citizens' right to vote on November 3, 1964 on account of race, color or previous condition of servitude and deprives the Plaintiff, her political subdivisions, officials and inhabitants of the right and opportunity to deny and disprove the accuracy and validity of said presumption, and fails to create a similar irrebuttable presumption with respect to certain other Sovereign States and their political subdivisions similarly situated.

(i) The Act grants to certain of the Plaintiff's inhabitants the right to register and vote in violation of her

Constitution and voting laws and fails to grant such a right to inhabitants in like circumstances of certain other Sovereign States similarly situated.

23. The Act, particularly §§4, 5, 6(b), 11 and 12, both as drawn and applied to the Plaintiff, her political subdivisions, officials and residents, unconstitutionally and unlawfully invades, restricts and abrogates the exclusive rights and duties of the Plaintiff and her political subdivisions to regulate and prescribe reasonable qualifications for its residents to vote, in the interest of better state, local and federal government, all as reserved to the Plaintiff under the Tenth Amendment to the Constitution of the United States of America as specifically reaffirmed by Article I, §§2 and 4, and the Seventeenth Amendment of said Constitution, in the following particulars, to wit:

(a) The Act deprives the Plaintiff, her political subdivisions, officials and residents of their right to prescribe a reasonable, lawful and constitutional literacy test, fairly and equally administered, as a prerequisite to registration and participation in their elections and those of the United States of America.

(b) The Act grants to certain of Plaintiff's inhabitants the right to register and vote in all elections, federal, state and local, in violation of Plaintiff's Constitution and laws.

(c) The Act authorizes employees, agents and servants of the Federal government to register and vote the Plaintiff's inhabitants in violation of her Constitution and laws.

(d) The Act purports to regulate the manner and conduct of elections of the Plaintiff and her political subdivisions and the preservation of such election records.

(e) The Act denies the Plaintiff, her political subdivisions and inhabitants of the right to enact changes in her existing registration and election laws or to adopt new such laws without Federal approval.

24. That the Act, particularly §§4, 5, 6(b), 11 and 12, both as drawn and applied to the Plaintiff, her political subdivisions, officials and inhabitants, exceeds the Consti-

tutional authority granted to the Congress of the United States under the Fifteenth Amendment to the Constitution of he United States of America to enforce its provisions, the purpose for which the Act was enacted, in the following particulars, to wit:

(a) The Act is not "appropriate" in that the basis and reason for its application to the Plaintiff, her political subdivisions, officials and inhabitants—to wit, the failure of her registered citizens to vote in certain numbers on November 3, 1964 has no relation to any denial or abridgment of the Plaintiff's inhabitants' right to vote on account of race, color or previous condition of servitude.

(b) The Act is not "appropriate" in that it effectively creates an irrebuttable presumption that the Plaintiff, her political subdivisions, officials and inhabitants were guilty of the denial or abridgment of their residents' right to vote on November 3, 1964 on the basis of race, color or previous condition of servitude and deprives the Plaintiff, her political subdivisions, officials and inhabitants of the right and opportunity to deny and disprove the accuracy and validity of said presumption.

(c) The Act is not "appropriate" in that the Act grants the Plaintiff's inhabitants the right to register and vote in violation of her Constitution and laws even though they have not been denied or deprived of the right to vote on the ground of race, color or previous condition of servitude.

(d) The Act is not "appropriate" in that it deprives the Plaintiff, her political subdivisions, officials and inhabitants of their right to a reasonably literate electorate, as guaranteed by Plaintiff's Constitution and laws, even though there has been no denial of her residents' right to vote on account of race, color or previous condition of servitude.

(e) The Act is not "appropriate" in that it is not reasonably designed to prohibit the denial of the right to vote on the grounds of race, color or previous condition of servitude of all the citizens of all the Sovereign States of the Union.

(f) The Act is not "appropriate" in that it undertakes to regulate and make criminal wrongful conduct in connection with voter registration and elections unrelated to the denial of the right to vote on account of race, color or previous condition of servitude.

25. That the Act, particularly §§4, 5 and 6(b) both as drawn and applied to the Plaintiff, her political subdivisions, officials and citizens, constitutes an unlawful and unconstitutional attempt by the Congress of the United States to exercise judicial functions not authorized by Article I of the Constitution of the United States of America in violation of Article III of the Constitution of the United States of America in that it arbitrarily assumes, from unrelated facts, that the Plaintiff, her political subdivisions, officials and inhabitants were guilty of a denial of her inhabitants' right to vote on the ground of race, color or previous condition of servitude on November 3, 1964 and prohibits the Plaintiff, her political subdivisions, officials and inhabitants from proving, in any constitutional court, the validity or accuracy of said presumption.

26. That the Act, particularly §§4, 5 and 6(b), as drawn and applied to the Plaintiff, her political subdivisions, officials and inhabitants, constitutes an unlawful and unconstitutional Bill of Attainder and *ex post facto* law within the meaning of Article I, §9 of the Constitution of the United States in that it deprives the Plaintiff, her political subdivisions, officials and inhabitants of the right to prescribe reasonable qualifications for its voters, including a fair, reasonable and lawful literacy test as a prerequisite to voter registration, solely because the Plaintiff and her political subdivisions, officials and residents failed to vote a certain percentage quota of their inhabitants on November 3, 1964, which failure was proper, constitutional and lawful on November 3, 1964, but which failure is now irrebuttably presumed to be the result of a denial of the rights of her inhabitants guaranteed under the Fifteenth Amendment.

27. That the Act, particularly §§4, 5 and 6(b), both as drawn and applied to the Plaintiff, her political subdivisions, officials and inhabitants, violates the provisions of Article IV, §2 of the Constitution of the United States of America in that it denies the Plaintiff's inhabitants the right to have a reasonably literate electorate in the interest of better government, state, local anad federal, a right permitted by Congress and the Constitution to citizens of other Sovereign States similarly situated.

WHEREFORE, Plaintiff prays:

1. That a decree be entered judging the Act, particularly §§4, 5, 6(b), 11 and 12 in violation of the Constitution of the United States as drawn and applied to the Plaintiff, her political subdivisions, officials and inhabitants.

2. That a decree be entered permanently enjoining and prohibiting the Defendant from enforcing or attempting to enforce the Act, particularly §§4, 5, 6(b), 11 and 12 with respect to the Plaintiff, her political subdivisions, officials and inhabitants.

3. For such other and further relief as this Court may deem proper and necessary.

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September, 1965

EXHIBIT A

GENERAL ELECTION
November 3, 1964

	[a] Over 21 (1960 Census)	[b] Registered 1964	% Registered Over 21	[b] Voted	% Voted of Over 21	% Voted of Registered	[c] % Illiterate Over 25	[d] % Pop. Over 21—Negro	[b] State-Wide Contested	[b] Congressional Contested		[b] County Local Contested	[b] County Uncontested
1. Abbeville	11,948	7,184	60.12	4,137	34.62	73.36	22.9	26.90	President Only	NC		0	5
2. Aiken	43,686	26,266	83.91	25,089	57.43	69.18	17.4	23.80		NC		2	9
3. Allendale	5,736	3,257	56.78	2,512	43.79	77.12	34.0	55.87		NC		1	1
4. Anderson	57,140	35,226	61.64	20,068	35.12	56.96	19.5	16.79		NC		2	7
5. Bamberg	8,178	5,404	66.07	3,785	46.28	70.04	26.6	46.55		NC		0	5
6. Barnwell	8,894	8,008	90.03	5,052	56.80	63.08	23.2	36.45		NC		0	5
7. Beaufort	17,741	12,065	73.64	9,637	54.32	73.76	28.7	42.95		NC		1	1
8. Berkeley	19,345	8,165	42.20	6,184	31.96	75.73	20.2	27.46		NC		0	5
9. Calhoun	5,941	2,946	49.58	2,203	37.08	74.77	26.0	55.84		NC		3	13
10. Charleston	113,468	62,474	55.95	47,973	41.49	74.16	14.7	31.30			C	1	2
11. Cherokee	19,397	15,286	78.67	7,885	40.65	51.67	25.2	17.32			C	1	6
12. Chester	16,836	12,217	72.56	6,797	40.37	55.63	24.8	33.64			C	1	5
13. Chesterfield	17,318	11,704	67.58	7,083	40.89	60.51	28.4	35.13		NC		0	6
14. Clarendon	12,958	4,519	34.87	3,792	29.26	89.91	32.4	59.69		NC		1	5
15. Colleton	14,383	8,293	57.03	6,668	46.49	46.49	29.3	42.96			C	10	10
16. Darlington	26,606	15,881	59.68	11,727	44.07	73.84	24.1	37.29			C	1	5
17. Dillon	14,254	8,909	62.50	5,515	38.69	61.90	30.6	38.78		NC		6	6
18. Dorchester	12,491	9,056	72.50	6,713	53.74	74.13	25.2	42.99		NC		1	8
19. Edgefield	7,867	4,623	58.76	3,313	42.11	71.66	23.1	47.84			C	2	5
20. Fairfield	10,511	6,275	59.69	4,625	44.00	73.70	30.7	52.66			C	1	11
21. Florence	42,998	25,590	59.51	17,503	40.70	68.39	23.6	37.09			C	0	8
22. Georgetown	16,928	10,978	68.49	8,128	50.71	74.03	31.3	44.75				11	16
23. Greenville	120,970	67,035	55.41	46,645	38.55	69.58	14.4	15.37		NC		1	6
24. Greenwood	25,962	16,264	62.59	11,132	42.84	68.44	17.4	26.03		NC		0	6
25. Hampton	8,763	5,612	64.04	3,698	42.20	65.89	31.8	46.23		NC		0	11
26. Horry	34,947	22,001	62.95	13,737	39.30	62.43	18.9	21.25			C	0	5
27. Jasper	6,022	3,780	62.78	2,595	43.09	68.65	37.1	55.34		NC		0	5
28. Kershaw	17,161	11,881	69.23	8,785	51.19	73.94	23.9	34.39			C	1	6

29. Lancaster	20,975	18,095	86.12	9,712	46.30	53.76	19.3	22.79		C	0		6
30. Laurens	26,593	12,453	50.58	9,446	35.52	70.21	24.2	25.63		NC	0		8
31. Lee	9,849	5,521	56.10	3,645	37.04	66.02	21.6	55.34		C	0		5
32. Lexington	23,556	23,071	68.75	16,848	50.20	73.02	13.9	14.25		NC	3		8
33. McCormick	4,163	2,210	53.08	1,437	34.51	65.02	28.1	53.99		NC	0		12
34. Marion	15,787	7,351	46.56	5,243	33.21	71.32	25.6	48.67		C	0		8
35. Marlboro	14,162	8,352	58.97	4,296	30.35	51.31	29.8	41.88		C	0		5
36. Newberry	17,155	11,471	66.85	8,793	51.24	76.65	20.0	28.87		NC	0		7
37. Oconee	21,902	13,596	61.82	8,272	37.61	60.84	29.4	10.14		NC	2		8
38. Orangeburg	33,736	29,098	59.57	16,063	47.61	79.92	25.9	51.44		NC	0		9
39. Pickens	26,371	16,851	63.89	9,388	35.59	55.71	17.6	08.93		NC	0		8
40. Richland	111,720	60,940	54.54	45,245	40.49	74.24	12.9	29.24		NC	6		19
41. Saluda	7,909	5,950	75.31	3,933	49.78	66.10	17.0	29.45		NC	0		8
42. Spartanburg	90,364	58,945	65.23	38,445	42.54	65.22	18.5	18.86		NC	0		15
43. Sumter	37,384	14,017	37.49	11,504	30.77	82.07	19.8	41.14		NC	0		9
44. Union	16,961	14,510	85.59	7,707	45.42	53.11	23.2	24.33		C	0		9
45. Williamsburg	18,994	9,836	54.35	7,068	39.00	71.75	31.3	58.22		C	0		7
46. York	41,566	24,368	58.02	15,638	37.23	64.17	19.2	24.27		C	8		9
State	1,266,251 1,380,900a	772,572	61.01 55.96	524,764	41.44 38.02	67.92	20.3	29.30			61 17.57%		347 Contested

a 1964 Census figures by County were not available.
b Report of Secretary of State of South Carolina.
c Obtained from South Carolina Department of Education.
d U. S. Commission on Civil Rights, Information Center, March 19, 1965.
e 1964 Census Report.

EXHIBIT B

APPLICATION FOR REGISTRATION

Dated at _____, S. C., _____ day of _____, 19_____.

I, _____, hereby apply for registration as an elector and certify under oath that:

1. I am a female, a member of the _____ race, born at _____, on _____. I reside at _____ Street in the town or city of _____ or on _____ Road in _____ Township or Parish in _____ County. My nearest voting place is _____. My weight is _____ lbs., my height is _____ ft. _____ in., the color of my eyes _____, the color of my hair _____.

☐ 2. (a) I will have resided in South Carolina for at least one year, in this County for at least six months and in my voting precinct for at least three months prior to any election at which I will be entitled to vote if a registration certificate is issued to me upon this application;

☐ (b) I am a minister or spouse of a minister in charge of an organized church in this State and will have resided in South Carolina for a period of six months prior to any such election; or

☐ (c) I am a teacher of public school or spouse of a teacher and will have resided in South Carolina for a period of six months prior to any such election.

☐ 3. I am not an idiot, or insane, a pauper supported at public expense or confined in any public prison.

4. I will demonstrate to the registration board that:

☐ (a) I can both read and write a section of the Constitution of South Carolina; or

☐ (b) I own and have paid all taxes due last year on property in this State assessed at three hundred dollars or more.

☐ 5. (a) I have never been convicted of any of the following crimes: Burglary, arson, obtaining goods or money under false pretenses, perjury, forgery, robbery, bribery, adultery, bigamy, wife-beating, housebreaking, receiving stolen goods, breach of trust with fraudulent intent, fornication, sodomy, incest, assault with intent to ravish, miscegnation, larceny or crimes against the election laws; or

☐ (b) I have been legally pardoned for such conviction.

_____
Applicant

Sworn to and subscribed before me this _____ day of _____, 19_____.

Examined and found (not) qualified

_____
Member of Registration Board

_____
Member of Registration Board

GENERAL ELECTIONS

	Population Over 21 [a]	Registered [b]	% Registered Over 21	Voted [c]	% Voted Over 21
1962	1,266,251 (1960)	666,694	56.25	312,647	24.69
1960	1,266,251 (1960)	595,989	47.06	386,688	30.53
1958	1,266,251 (1960)	536,205	42.34	77,714	6.13
1956	1,150,867 (1950)	761,162	66.14	300,473	26.10
1954	1,150,867 (1950)			214,599	18.64
1952	1,150,867 (1950)			341,000	29.62
1950	1,150,867 (1950)			50,633	4.39
1948	1,150,867 (1950)			102,607	8.91
1946	991,536 (1940)			26,250	2.64
1944	991,536 (1940)			103,366	10.42
1942	991,536 (1940)			23,877	2.40
1940	991,536 (1940)			99,830	10.06
1938	991,536 (1940)			49,009	4.94
1936	819,384 (1930)			115,437	14.08
1934	819,384 (1930)			22,873	2.79
1932	819,384 (1930)			104,407	12.75
1930	819,384 (1930)			13,790	2.17
1928	819,384 (1930)			68,602	8.37
1926	779,991 (1920)				
1924	779,991 (1920)			50,751	6.50

a. From U. S. Bureau of Census report.
b. From reports of South Carolina Secretary of State. Statistics not available prior to 1
c. From records of South Carolina Secretary of State and U. S. Bureau of Census.
d. From reports of South Carolina Secretary of State. No contest assumed when loser dr
e. From "Tabulation of Votes, South Carolina Democratic Primaries", 1930-1962, 1947 an
statistics available. No contest assumed when loser drew less than 10% of total vo

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EXHIBIT C-1

SOUTH CAROLINA GENERAL ELECTION AND PRIMARY STATISTICS—1924 - 1962

GENERAL ELECTIONS

GENERAL ELECTIONS

...tered ...21	Voted [c]	% Voted Over 21	% Voted Registered	Statewide Races Contested 1 Senate [d]	Con. Races Contested [d]	County Races Contested C	NC	% C
...25	312,647	24.69	46.89		14 counties	27	266	15.15
...06	386,688	30.53	64.88	1 Pres.	-0-	4	356	1.12
...34	77,714	6.13	14.49	0	-0-	7	243	2.88
...14	300,473	26.10	39.47	Pres.				
	214,599	18.64		Sen.				
	341,000	29.62		1 Pres.	-0-	8	370	2.16
	50,633	4.39		0		4	259	1.54
	102,607	8.91		Pres.				
	26,250	2.64						
	103,366	10.42		Pres.				
	23,877	2.40						
	99,830	10.06		Pres.				
	49,009	4.94		0				
	115,437	14.08		Pres.				
	22,873	2.79		Pres.				
	104,407	12.75						
	13,790	2.17						
	68,602	8.37		Pres.				
	50,751	6.50		Pres.				

PRIMARIES [e]

Registered (or Enrolled, Prior to 1950	% Registered Over 21	Voted	% Voted Over 21	% Voted Registered	Statewide Races Contested	Cong. Races Contested (by County)
655,370	51.75	328,291	25.92	50.09	7	21
587,415	46.39	305,931	24.16	52.08	1	0
536,026	42.33	377,239	29.79	70.37	6	8
701,079					0	7
	60.91	302,483	26.28	43.14	4	11
					0	7
567,467	49.30	354,084	30.76	62.39	6	30
506,818	44.03	334,303	29.04	65.91	1	24
453,077	45.69	289,214	29.16	63.83	4	22
401,137	40.45	250,776	25.29	62.51	1	9
375,672	37.88	234,972	23.64	62.54	4	25
439,022	44.27	319,727	32.24	72.82	Referendum	46
423,036	42.66	337,008	33.98	79.66	3	39
481,322	58.74	295,470	36.06	61.38	3	29
375,796	45.86	297,430	36.29	79.14	6	29
417,599	50.96	271,129	33.08	64.92	1	29
306,765	37.43	245,743	29.99	80.10	8	22
		159,246	20.41			
		199,151	25.53			

...of State. Statistics not available prior to 1956.
...of State and U. S. Bureau of Census.
...of State. No contest assumed when loser drew less than 10% of total vote. Incomplete for 1954, 1956 and prior to 1950.
... Democratic Primaries", 1930-1962, 1947 and 1962 eds. and "Southern Primaries and Elections", Heard & Strong. Incomplete for 1956, 1952 and prior to 1930. No county race ...when loser drew less than 10% of total vote.

EXHIBIT C-2

State	% Registered Voting November 3, 1964
Alabama	65.23
Alaska	
Arizona	82.26
Arkansas	84.44
California	86.23
Colorado	83.25
Connecticut	88.72
Delaware	82.00
Florida	74.13
Georgia	62.35
Hawaii	86.59
Idaho	86.59
Illinois	84.97
Indiana	79.57
Iowa	
Kansas	
Kentucky	104.61
Louisiana	74.97
Maine	72.94
Maryland	79.02
Massachusetts	86.15
Michigan	95.56
Minnesota	
Mississippi	73.98
Missouri	
Montana	85.08
Nebraska	
Nevada	82.84
New Hampshire	78.88
New Jersey	87.49
New Mexico	70.46
New York	84.87
North Carolina	64.77
North Dakota	
Ohio	
Oklahoma	78.42
Oregon	84.21
Pennsylvania	
Rhode Island	82.52
South Carolina	67.92
South Dakota	79.26
Tennessee	70.23
Texas	78.67
Utah	89.50
Vermont	77.93
Virginia	79.50
Washington	79.54
West Virginia	75.04
Wisconsin	
Wyoming	

EXHIBIT D-1

Average Per Capita Personal Income[1]

	1960	1950	1940	1929
Alabama	$1462	$ 869	$ 282	$ 324
Alaska	2760	2231	.....	.....
Arizona	2013	1295	497	591
Arkansas	1338	807	256	305
California	2725	1839	840	995
Colorado	2283	1444	546	637
Connecticut	2858	1900	917	1029
Delaware	3002	2146	1004	1017
Florida	1967	1287	513	521
Georgia	1609	1017	340	350
Hawaii	2274	1403	577	.....
Idaho	1765	1279	464	503
Illinois	2636	1826	754	957
Indiana	2188	1520	553	612
Iowa	2022	1449	501	577
Kansas	2060	1380	426	535
Kentucky	1536	958	320	391
Louisiana	1608	1087	363	415
Maine	1871	1193	523	601
Maryland	2398	1580	712	777
Massachusetts	2518	1663	784	913
Michigan	2317	1682	679	793
Minnesota	2074	1397	526	598
Mississippi	1168	733	218	285
Missouri	2204	1446	524	678
Montana	2004	1600	570	595
Nebraska	2129	1472	439	590
Nevada	2791	1938	876	878
New Hampshire	2075	1316	579	690
New Jersey	2663	1790	822	931
New Mexico	1806	1162	375	407
New York	2778	1882	870	1159
North Carolina	1562	1012	328	334
North Dakota	1749	1268	350	375
Ohio	2331	1612	665	781
Oklahoma	1840	1146	373	454
Oregon	2225	1600	623	683
Pennsylvania	2256	1566	648	775
Rhode Island	2193	1652	743	871
South Carolina	1379	882	307	270
South Dakota	1845	1216	359	377
Tennessee	1539	995	339	377
Texas	1917	1339	432	478
Utah	1910	1282	487	559
Vermont	1892	1188	507	627
Virginia	1852	1234	466	435
Washington	2300	1671	662	750
West Virginia	1676	1098	407	462
Wisconsin	2157	1467	554	682
Wyoming	2284	1623	608	677

[1] Statistical Abstract of U. S. by Bureau of Census.

EXHIBIT D-2
% OF ADULT POPULATION ILLITERATE[1]

	1960 % Functional Illiterates—25 Years and Older	1950 % Over 25 Under 5 Years of School Completed	1940 % Over 25 Less Than 5 Years Completed	1930 % Over 21 Illiterate Cannot Read or Write Any Language	1920 % Over 21 Cannot Write Any Language	1910 % Over 21 Cannot Write Any Language
Alabama	16	22.6	28.9	15.9	20.0	26.2
Alaska	8					
Arizona	10	14.1	19.4	11.9	16.1	21.9
Arkansas	15	19.8	23.1	8.7	11.5	16.1
California	5	6.8	8.1	3.1	3.9	4.3
Colorado	4	7.1	9.0	3.5	3.9	4.4
Connecticut	6	8.8	11.2	6 0	7.8	7.2
Delaware	6	9.7	12.9	5.1	7.4	10.0
Florida	9	13.7	18.5	8.3	10.9	15.5
Georgia	17	24.2	30.1	11.7	18.4	24.1
Hawaii	15					
Idaho	3	4.7	5.2	1.4	1.9	2.7
Illinois	6	7.8	9.6	3.1	4.3	4.7
Indiana	4	4.6	7.7	2.1	2.8	3.9
Iowa	3	3.9	4.1	1.0	1.4	2.2
Kansas	3	5.0	6.1	1.5	2.0	2.8
Kentucky	13	16.8	20.2	8.1	10.6	14.5
Louisiana	21	28.7	35.7	16.9	24.9	31.1
Maine	4	6.7	7.4	3.3	3.9	4.7
Maryland	7	10.9	15.3	4.7	6 8	8.7
Massachusetts	6	7.9	10.1	4.5	5.9	6.2
Michigan	5	7.5	10.2	2.5	3.9	4.2
Minnesota	4	5.8	7.5	1.6	2.4	4.0
Mississippi	18	25.2	30.2	16 8	20.8	26.8
Missouri	7	8.4	10.3	2.8	3.8	5.4
Montana	4	6.3	7.4	2.2	2.8	5.5
Nebraska	3	4.9	6.0	1.5	1.8	2.5
Nevada	3	6.8	8.8	5.2	6.7	6.8
New Hampshire	4	6.3	8.1	3.4	5.4	5.5
New Jersey	7	12.1	12.0	5.0	6.6	6.7
New Mexico	12	18.0	27.3	16.7	18.9	23.4
New York	7	9.5	12.1	4 7	6.4	6.6
North Carolina	16	21.1	26.2	13.1	16.9	22.6
North Dakota	6	8.8	10.8	2.0	2.9	3.7
Ohio	5	6.9	8.4	2.9	3.6	4.0
Oklahoma	8	11.0	13.2	3.5	4.7	6.9
Oregon	3	4.3	5.2	1.2	1.8	2.2
Pennsylvania	6	9.4	12.3	4.1	6.0	7.3
Rhode Island	7	9.7	13.7	6.4	8.2	9.2
South Carolina	20	27.4	34.7	18.6	23.0	29.6
South Dakota	4	5.9	7.2	1.6	2.2	3.7
Tennessee	14	18.3	21.7	9.0	12.6	16.3
Texas	13	15.8	18.8	7.9	9.6	11.6
Utah	2	4.4	5.5	1.6	2.5	3.1
Vermont	3	5.5	6.1	2.7	3.8	4.6
Virginia	13	17.5	23.2	10.8	13.5	17.9
Washington	3	4.6	5.9	1.3	2.1	2.3
West Virginia	11	13.7	16.5	6.3	8.2	10.2
Wisconsin	5	7.1	9.4	2.4	3.2	4.2
Wyoming	3	5.7	7.1	2.0	2.5	3.8

[1] Statistics obtained from reports of U. S. Bureau of Census for appropriate years.

EXHIBIT E 1

IN THE

Supreme Court of the United States

October Term 1965

NO. ....., ORIGINAL

STATE OF SOUTH CAROLINA, *Plaintiff*

v.

NICHOLAS deB. KATZENBACH,
Attorney General of the
United States, *Defendant*

AFFIDAVIT

State of South Carolina
County of Richland

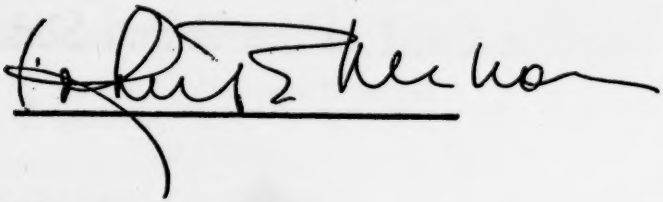
PERSONALLY appeared before me Robert E. McNair who, being duly sworn, deposes and says:

1. That he is Governor of the State of South Carolina and has served in that capacity since April 23, 1965.

2. That he has caused a search of the records of his office to be made since January, 1963 with respect to any complaints about the administration of the literacy test of South Carolina in connection with registration of inhabitants to vote in the State of South Carolina.

3. That according to his search of the records of his office and of affiant's personal knowledge during the occupancy of his office, there have been no complaints filed with him or his office over existence or administration of the literacy test in connection with the voter registration of

the inhabitants of South Carolina raising any question of the right of the registrant to register and vote on account of race, color or previous condition of servitude, or otherwise.



SWORN to before me this 24th
day of September, 1965.

DAVID W. ROBINSON, II (LS)
Notary Public for South Carolina
My Commission expires at pleasure of the Governor

EXHIBIT E 2

IN THE

Supreme Court of the United States

October Term 1965

NO. ....., ORIGINAL

STATE OF SOUTH CAROLINA, *Plaintiff*

v.

NICHOLAS deB. KATZENBACH,
Attorney General of the
United States, *Defendant*

AFFIDAVIT

State of South Carolina
County of Richland

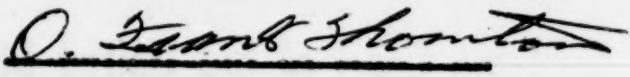
PERSONALLY appeared before me O. Frank Thornton who, being duly sworn, deposes and says:

1. That he is Secretary of State of the State of South Carolina and has served in that capacity since Feb. 1, 1950.

2. That he has caused a search of the records of his office to be made since Feb. 1, 1950 with respect to any complaints about the administration of the literacy test of South Carolina in connection with registration of inhabitants to vote in the State of South Carolina.

3. That according to his search of the records of his office and of affiant's personal knowledge during the occupancy of his office, there have been no complaints filed with him or his office over existence or administration of the literacy test in connection with the voter registration of the

inhabitants of South Carolina raising any question of the right of the registrant to register and vote on account of race, color or previous condition of servitude, or otherwise.



SWORN to before me this 24th
day of September, 1965.

DAVID W. ROBINSON, II (LS)
Notary Public for South Carolina
My Commission expires at pleasure of the Governor

EXHIBIT E 3

IN THE

Supreme Court of the United States

October Term 1965

NO. ....., ORIGINAL

STATE OF SOUTH CAROLINA, *Plaintiff*

v.

NICHOLAS deB. KATZENBACH,
Attorney General of the
United States, *Defendant*

AFFIDAVIT

State of South Carolina
County of Richland

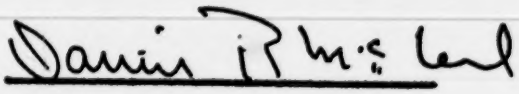
PERSONALLY appeared before me Daniel R. McLeod who, being duly sworn, deposes and says:

1. That he is Attorney General of the State of South Carolina and has served in that capacity since January 1959.

2. That he has caused a search of the records of his office to be made since 1940 with respect to any complaints about the administration of the literacy test of South Carolina in connection with registration of inhabitants to vote in the State of South Carolina.

3. That according to his search of the records of his office and of affiant's personal knowledge during the occupancy of his office, there have been no complaints filed with him or his office over existence or administration of

the literacy test in connection with the voter registration of the inhabitants of South Carolina raising any question of the right of the registrant to register and vote on account of race, color or previous condition of servitude, or otherwise.



SWORN to before me this 24th
day of September, 1965.

DAVID W. ROBINSON, II (LS)
Notary Public for South Carolina
My Commission expires at pleasure of the Governor

EXHIBIT F 1

Department of Justice
Washington

August 8, 1965

Honorable Daniel R. McLeod
Attorney General
State of South Carolina
Columbia, South Carolina

Dear General McLeod:

I am writing to advise you that Attorney General Katzenbach has sent the Voting Rights Act of 1965 and the Civil Service regulations published yesterday, together with a letter from him, to the Chairman of each county Board of Registrars in the State of South Carolina. Copies of these documents are enclosed.

In the event that you or any members of your staff have any questions regarding this law, please feel free to call me. I want to do all I can to assist in bringing about compliance with this law.

Sincerely,

John Doar

JOHN DOAR
Assistant Attorney General
Civil Rights Division

Enclosures

EXHIBIT F 2

OFFICE OF THE ATTORNEY GENERAL
Washington, D. C.
August 7, 1965

I am writing to explain the provisions of the Voting Rights Act of 1965. The Act was signed into law by the President on August 6, 1965, and is now in effect in South Carolina.

Basically, the Act suspends the use of all literacy, knowledge and character tests and devices as voter qualifications in every county in each state where less than 50 percent of the residents of voting age were registered on November 1, 1964, or voted in the presidential election of November, 1964. This includes South Carolina, and for that reason tests which you may have required applicants for registration to take in accordance with state law cannot now be used as a qualification for voting.

Until recently, applicants for voter registration in South Carolina have been required to read and write portions of the Constitution if they did not provide evidence of ownership of sufficient property. Under the Voting Rights Act of 1965 the reading and writing test must be discontinued, and applicants who are otherwise qualified are entitled to be registered whether or not they own sufficient property. The other registration requirements such as age, residence, citizenship, sanity and non-conviction of a crime are not effected by the Voting Rights Act of 1965.

I enclose for your study a copy of the Voting Rights Act of 1965, and the Civil Service regulations. You will see that the Act authorizes the appointment of Federal Examiners to register eligible voters where I determine that their appointment is necessary to enforce the constitutional guarantee against voting discrimination, or where I receive twenty bona fide complaints of discrimination. Thus, the decision to appoint examiners will be made where it is clear that past denials of the right to vote justify it or where present compliance with federal law, including the

Voting Rights Act, is insufficient to assure prompt registration of all eligible citizens.

The primary responsibility for registration remains with state and county officials. Even where examiners are appointed, the President has stated, "When the prospect of discrimination is gone, the examiners will be immediately withdrawn."

If you have any questions regarding the new law please feel free to call upon our attorneys in the Department of Justice or write to us. I want to be as helpful as possible to you in bringing about compliance with the requirements of this law.

Sincerely,

NICHOLAS DEB. KATZENBACH
Attorney General

EXHIBIT F 3

[Reprinted from "Notices" from the Federal Register of August 7, 1965]

DEPARTMENT OF COMMERCE

BUREAU OF THE CENSUS

Determination of the Director of the Census pursuant to Section 4(b)(2) of the Voting Rights Act of 1965 (Public Law 89-110)

I have this date received a letter from the Attorney General advising me that he has determined that the following States maintained on November 1, 1964, one or more tests or devices as defined in section 4(c) of the Act:

Alabama
Alaska
Arizona
California
Connecticut
Delaware
Georgia
Hawaii
Idaho
Louisiana
Maine
Massachusetts
Mississippi
New Hampshire
New York
North Carolina
Oregon
South Carolina
Virginia
Washington
Wyoming

In accordance with section 4(b)(2) of the Voting Rights Act of 1965 (Public Law 89-110), I have determined that in each of the following States less than 50 per centum of the persons of voting age residing therein voted in the presidential election of November 1964:

Alabama
Alaska
Georgia
Louisiana
Mississippi
South Carolina
Virginia

I have also determined that in each of the following political subdivisions considered as a separate unit less than 50 per centum of the persons of voting age residing therein voted in the presidential election of November 1964:

NORTH CAROLINA

Anson County
Bertie County
Caswell County
Chowan County
Craven County
Cumberland County
Edgecombe County
Franklin County
Gates County
Granville County
Greene County
Halifax County
Hertford County
Hoke County

Lenoir County
Nash County
Northampton County
Onslow County
Pasquotank County
Person County
Pitt County
Robeson County
Scotland County
Vance County
Wayne County
Wilson County

ARIZONA

Apache County

Current studies of other political subdivisions will be completed as soon as the relevant data are obtained and in accordance with the Voting Rights Act of 1965, I will make additional determinations for such political subdivisions in which less than 50 per centum of the persons of voting age residing therein were registered on November 1, 1964, or in which less than 50 per centum of such persons voted in the presidential election of November 1964.

A. ROSS ECKLER, *Director*
Bureau of the Census.

August 6, 1965.

[F.R. Doc. 65-8417; Filed, Aug. 6, 1965; 3:01 p.m.]

DEPARTMENT OF JUSTICE

OFFICE OF THE ATTORNEY GENERAL

Determination of the Attorney General pursuant to Section 4(b)(1) of the Voting Rights Act of 1965

In accordance with section 4(b)(1) of the Voting Rights Act of 1965 (Public Law 89-110), I have determined that each of the following States maintained on November 1, 1964, one or more tests or devices as defined in section 4(c) of the Act:

Alabama
Alaska
Arizona
California
Connecticut
Delaware
Georgia
Hawaii
Idaho
Louisiana
Maine
Massachusetts
Mississippi
New Hampshire
New York
North Carolina
Oregon
South Carolina
Virginia
Washington
Wyoming

NICHOLAS DEB. KATZENBACH,
Attorney General.

August 6, 1965.

[F.R. Doc. 65-8416; Filed, Aug. 6, 1965; 3:00 p.m.]

NO. ....., ORIGINAL

IN THE

Supreme Court of the United States

October Term 1965

STATE OF SOUTH CAROLINA, *Plaintiff*

v.

NICHOLAS deB. KATZENBACH,
Attorney General of the
United States, *Defendant*

BRIEF OF THE PLAINTIFF

DANIEL R. MCLEOD
Attorney General
State of South Carolina
DAVID W. ROBINSON
DAVID W. ROBINSON, II
Special Counsel
P. O. Box 1942
Columbia, S. C.

ROBINSON, MCFADDEN & MOORE
OF COUNSEL

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Argument

I.

The Act, in creating an arbitrary and irrebuttable presumption of a violation of the Fifteenth Amendment solely by the Plaintiff and certain other Sovereign States, violates the principles of equality of statehood with respect to the Plaintiff and Her Political Subdivisions, deprives her inhabitants of rights guaranteed under Article IV, §2 and the Fifth Amendment to the Constitution of the United States, and exceeds the powers granted Congress under the Fifteenth Amendment to the Constitution of the United States 50

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IN THE

Supreme Court of the United States

October Term 1965

NO. ....., ORIGINAL

STATE OF SOUTH CAROLINA, *Plaintiff*

v.

NICHOLAS deB. KATZENBACH,
Attorney General of the
United States, *Defendant*

BRIEF FOR THE PLAINTIFF

JURISDICTION

The Plaintiff is a Sovereign State of the United States. The Defendant is a resident of a State other than the Plaintiff and is currently serving as the Attorney General of the United States. The jurisdiction of this Court is invoked under Article III, §2, Clauses 1 and 2 of the Constitution of the United States.

QUESTION PRESENTED

Whether "The Voting Rights Act of 1965" violates the constitutional rights of the Plaintiff and her inhabitants under Article I, §§2, 4 and 9, Article III, Article IV, §2, Fifth Amendment, Fifteenth Amendment, and Seventeenth Amendment to the Constitution of the United States.

STATEMENT

On August 6, 1965, the Congress passed, and the President of the United States approved, "The Voting Rights Act of 1965", Public Law 89-110, 89th Congress, S.1564.[1] On August 7, 1965, the Defendant and the United States Bureau of the Census published certain certificates in the "Federal Register" and on August 8, 1965 the Defendant purported to invoke certain sections of the Act with respect to the Plaintiff's voter registration and election procedures.

INTRODUCTION

This action draws in question the constitutionality of an attempt by the Congress and President to regulate and restrict the Plaintiff's power to prescribe reasonable and lawful qualifications for her inhabitants to register and vote and otherwise control her election procedures. The Plaintiff's interest in this question, as a Sovereign State, is immediate, vital and clearly justiciable.

Under the Constitution of the United States and her own Constitution and laws, the Plaintiff is particularly responsible to her inhabitants to provide and preserve to them a fair and reasonable election process to insure the best possible government. An essential part of this duty consists of furnishing the opportunity of her lawfully selected electorate to participate in her elections equally and without dilution in the extent of the exercise of that sufferage right.

Only recently has this Court, through such decisions as *Reynolds v. Sims*, 377 U.S. 533, *Gray v. Sanders*, 372 U.S. 368 and *Baker v. Carr*, 369 U.S. 186, finally recognized and held justiciable this critical obligation of the Sovereign States to their inhabitants. As a part of this function to prevent the debasement and dilution of the vote of her constitutional and literate electorate by the illegal injection

[1] Hereinafter referred to as "the Act". Pertinent provisions of the Constitution of the United States and the entire Act are reproduced in Appendix B. p. 76.

of the votes of illiterates, and thus incompetents in the field of government, the Plaintiff, as *parens patriae* to her inhabitants, brings this action. In effect, she is asserting for her inhabitants that the National Sovereign may not direct her to violate the rights of her citizens secured under the Fifth Amendment, which same rights this Court in these recent decisions has protected under the Fourteenth Amendment.

This invasion to which the Plaintiff objects strikes at the very heart of the manner of selection, and thus the future operation, of the government of her inhabitants, and all the myriad subjects and areas which it regulates and governs. Her interest and capacity to raise these assertions are closely akin to that of Georgia in *Georgia v. Penn. Rwy. Co.*, 324 U.S. 439, where this Court said:

> "Georgia as a representative of the public is complaining of a wrong, which if proven, limits the opportunities of her people, shackles her industries, retards her development, and relegates her to an inferior economic position among her sister States. These are matters of grave public concern in which Georgia has an interest apart from that of particular individuals who may be affected. Georgia's interest is not remote; it is immediate. If we denied Georgia as *parens patriae* the right to invoke the original jurisdiction of the Court in a matter of that gravity, we would whittle the concept of justiciability down to the stature of minor or conventional controversies. There is no warrant for such a restriction." p. 451

Nor is the Plaintiff here asserting any rights or relationships of her inhabitants for which the Federal Government, not the State, stands *parens patriae*, as in the case of *Massachusetts v. Mellon*, 262 U.S. 447 involving the federal taxing power. As will be shown, the rights here asserted lie within the peculiar province of the Plaintiff as a Sovereign State, not the National Sovereign. In the *Massachusetts v. Mellon* decision this Court was careful to preserve,

for circumstances such as these, the right of the Sovereign State to assert the rights of its citizens when it said:

> "We need not go so far as to say that a State may never intrevene by suit to protect its citizens against any form of enforcement of unconstitutional acts of Congress, but we are clear that the right to do so does not arise here." *Massachusetts v. Mellon*, supra, p. 485

Likewise, the Constitution of the United States specifically charges the Plaintiff, in her Sovereign capacity, with the responsibility of providing reasonable election qualifications and procedures for her inhabitants. It is also in this quasi-Sovereign capacity that the Plaintiff has brought this action to prevent the unconstitutional interference with her exclusive responsibilities.

Such was the interest of Missouri in *Missouri v. Holland* 252 U.S. 416, where this Court sustained the right of a Sovereign State to bring a bill seeking to enjoin a federal game warden from enforcing alleged unconstitutional federal regulation dealing with migratory waterfowl. So also in *Colorado v. Toll* 268 U.S. 228, this Court upheld the right of Colorado, in her quasi-Sovereign capacity, to challenge the validity of regulations issued by a National Park Superintendent which allegedly derogated from her exclusive authority over her inhabitants.

Finally, this Court has recognized that the interest of the Sovereign State, in its quasi-Sovereign capacity, is more than proprietary and extends beyond the private interests and rights of her citizens:

> "This is a suit by a state for an injury to it in its capacity as quasi-Sovereign. In that capacity the State has an interest independent of and behind the titles of its citizens, in all the earth and air within its domain. It has the last word as to whether its mountains shall be stripped of their forests and inhabitants shall breathe pure air. It might have to pay individuals before it could utter that word, but with it remains the final power. The alleged damage to the State as a private owner is merely a makeway, and we may lay on one side of the dispute as to whether the destruction

of forests has led to the gullying of its roads." *Georgia v. Tennessee Copper Co.*, 206 U.S. 230, 237.

See also *Georgia v. Penna. Rwy. Co.*, supra, 447-448

Furthermore, both the Congress and the President have specifically acknowledged the interest which the Plaintiff now asserts. By tying the applicability of certain of its provisions to the previous voting record of the Plaintiff's inhabitants on November 3, 1964, the Act is as specifically directed to the Plaintiff as a Sovereign State and to certain other Sovereign States, as if they were individually named therein. The terms of the Act itself apply to the conduct of the Plaintiff as a Sovereign State, authorize her to institute litigation to invoke its terms, permit her to be sued in her Sovereign capacity; and otherwise generally recognize her direct interest in its subject matter.[2]

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[2] "§2 No voting qualification . . . shall be imposed . . . by *any State* or political subdivision . . ."

"§3(a) . . . provided, that the Court need not authorize the appointment . . . if any incident . . . had been properly and effectively corrected *by State* or local action."

"§3(c) . . . provided that such qualification . . . may be enforced if the qualification . . . has been submitted by the chief legal officer or other appropriate official *of such State* . . ."

"§4(a) . . . no citizen shall be denied the right to vote . . . unless the United States District Court for the District of Columbia in an action for declaratory judgment brought *by such State* or subdivision . . ."

"§4(d) . . . *no State* or political subdivision shall be determined to have engaged in the use of tests or devices for the purpose . . . of denying . . . the right to vote . . . if (1) incidents . . . have been . . . effectively corrected *by State* or local action."

"§4(e)(1) Congress hereby declares that . . . it is necessary to *prohibit the States* from conditioning the right to vote."

"§5 Whenever *a State* or political subdivision . . . shall enact . . . any voter qualification . . . *such State* or subdivision may institute an action in the United States District Court for the District of Columbia . . ."

"§7(b) Any person whom the examiner finds . . . to have qualifications prescribed *by State* law . . . the examiner shall certify . . . with copies to . . . the Attorney General *of the State* . . ."

"The appropriate *State* or local election officials shall place such names on the official voting lists."

"§10(a) The Congress finds that the requirement of the payment of a poll tax . . . does not bear a reasonable relationship to any *legitimate State interest* in the conduct of election . . ."

"§10(b) In the exercise of the powers of Congress . . . the Attorney General is authorized . . . to institute forthwith in the name of the United States such actions, including actions *against States* or political subdivision . . ."

"§12(c) Whenever any person has engaged . . . in any act or practice prohibited . . . the Attorney General may institute . . . an action for preventive relief . . . directed *to the State and State* or local election officials to require them (1) to permit the persons listed under this Act to vote and (2) to count such votes."

"§16 The Attorney General . . . shall make a full and complete study to determine under the laws or practices of *any State or States*." [Emphasis added]

This express Congressional recognition of the Plaintiff's interest in the Act, as a Sovereign State, sustains her right to maintain this action to test its validity.[3]

Nor can it be said that this interest is not immediate and vital to the Plaintiff. If valid, the Act will require her to revise her voter registration procedures;[4] it may affect the makeup of her civil and criminal juries;[5] it may affect the eligibility of candidates for her public offices;[6] and it probably will require her to revise many of her election procedures.[7] Even more pressing, it prevents her from enacting any changes to improve her existing election procedures.[8]

In summary, the Plaintiff has a clear, justiciable interest in, and recognized capacity to bring, this action to question the constitutionality of this attempt by the Federal Government to regulate her election procedures.[9]

SUMMARY OF ARGUMENT

The Act deprives South Carolina and certain other States of their right to prescribe certain lawful voter registration requirements and to regulate their elections solely because less than 50% of their inhabitants over 21 voted in the November 1964 general election. No such proscription

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[3] Compare the conclusions drawn by this Court in seeking the Congressional intent from the language of the Taft-Hartley Act in *Textile Workers Union of American v. Lincoln Mills of Alabama*, 353 U.S. 448.

[4] §4 of the Act.

[5] Article V, §22 of the Constitution of South Carolina, providing for jury trials, states in part: ". . . Each juror must be a qualified elector under the provision of this Constitution, between the ages of twenty-one and sixty-five years, and of good moral character."

[6] Article XVII, §1 of the Constitution of South Carolina provides in part: "No person shall be elected or appointed to any office in this State unless he possesses the qualifications of an elector . . ."

[7] See, for example, §§7, 9 and 12 of the Act.

[8] §5 of the Act.

[9] No attempt has been made to anticipate the argument that this action cannot be maintained on the ground that it is in reality a suit against the United States. We would only refer the Court to the prayer of the Complaint and point out that no proprietary interest of the Federal Government is at stake. The Plaintiff simply requests that the enforcement of an unconstitutional Act of the Congress be enjoined. See *Larson v. Domestic and Foreign Commerce Corp.*, 337 U.S. 682; *Dugan v. Rank*, 372 U.S. 609; *Ohio v. Helvering*, 292 U.S. 360; *Minn. v. Hitchcock*, 185 U.S. 373.

is imposed upon other States with similar registration requirements for the sole reason that their voter participation exceeded this percentage. Similarly no such restrictions are directed to certain other states who had different registration requirements, but whose voting records were similar to the Plaintiffs and who have been charged with "massive racial discrimination" in voting.

The statutory presumption of racial discrimination in her voter registration procedures so directed to the Plaintiff is irrebuttable and arbitrary. It cannot be overcome by proof of facts existent at the time of those to which it is tied. Voter participation does not reflect misconduct in voter registration. The presumption permits no consideration of other factors affecting the participation of Plaintiff's electors in her general elections.

In applying only to the Plaintiff and certain other States, because of an arbitrary and irrebuttable presumption, the Act violates the principal of Equality of Statehood and deprives her inhabitants of rights secured under the Fifth and Fifteenth Amendments, and Article IV, §2.

The Act grants certain of the Plaintiff's inhabitants the right to vote in all elections in violation of her Constitution and laws. Thereby, in effect, Congress has directed the Plaintiff to dilute the value and weight of the role of her constitutional electorate in violation of the Fifth Amendment, which she might not do under the Fourteenth Amendment.

The Act also denies the Plaintiff the right to promulgate freely new election laws, supersedes her criminal election provisions and limits her regulation of elections and registration. Her registration requirements are lawful and have been lawfully administered. In so doing it exceeds all powers granted Congress under the Fifteenth Amendment and deprives the Plaintiff and her inhabitants of rights reserved exclusively to the States, as recognized in Article I, §§2 and 4 and the Seventeenth Amendment.

The Act fails to deal with the problem of racial discrimination in voting on a national level, as it exists in known

areas according to the evidence presented to the Congress. It applies to some states and subdivisions where no such prior discrimination has been known to exist. The Plaintiff's recent history reveals no need for the application of such radical legislation and extreme remedies to South Carolina and her inhabitants. Past violations of the Fourteenth Amendment in other areas afford no justification for such discriminatory legislation. The Act is thus not "appropriate" legislation and therefore violates the Fifteenth Amendment.

On November 3, 1964 it was lawful for more than 50% of the inhabitants of a State, over 21, to refrain from voting. Because of such occurrence on that date, the Plaintiff and her inhabitants are denied basic Constitutional rights by the Act. In so adjudging South Carolina, Congress has performed a judicial function. The Act is an unlawful Bill of Attainder and *ex post facto* law.

ARGUMENT

I

THE ACT, IN CREATING AN ARBITRARY AND IRREBUTTABLE PRESUMPTION OF A VIOLATION OF THE FIFTEENTH AMENDMENT SOLELY BY THE PLAINTIFF AND CERTAIN OTHER SOVEREIGN STATES, VIOLATES THE PRINCIPLES OF EQUALITY OF STATEHOOD WITH RESPECT TO THE PLAINTIFF AND HER POLITICAL SUBDIVISIONS, DEPRIVES HER INHABITANTS OF RIGHTS GUARANTEED UNDER ARTICLE IV, §2 AND THE FIFTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES, AND EXCEEDS THE POWERS GRANTED CONGRESS UNDER THE FIFTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

After properly recognizing, in its opening language, that a literacy test may not be applied to deprive a citizen of

the right to vote on account of race,[10] the Act absolutely prohibits South Carolina from lawfully enforcing her Constitutional literacy test.[11] She is likewise barred from amending or changing her voter registration and election laws without prior Federal approval,[12] is exposed to Federal "examiners" to supervise and administer her election procedures at the whim of the Attorney General,[13] and is forbidden recourse to her own courts and those of the Federal Government within her territories to question the applications of the Act's provisions.[14]

In contra-distinction, other sister Sovereign States are free to continue the administration of their similar literacy tests,[15] and are free to enact new literacy tests similar or more stringent than South Carolina's without suffering such prohibitions to their Sovereign power and the rights of their inhabitants.[16] Likewise political subdivisions of other sister States are left free of these restrictions solely because their voting records exceeded 50% of their inhabitants over twenty-one in November 1964, but certain of Plaintiff's counties are covered although their vote was comparable.[17] Even those counties individually restricted in other Sovereign States are permitted to avoid the Act by a court determination as to their own prior conduct only, a right denied like political subdivisions of the Plaintiff.[18]

In view of the oft-quoted language of this Court that:

> " 'This Union' was and is a union of states, equal in power, dignity and authority, each competent to exert

[10] §2 of the Act.

[11] §4(a)(b) of the Act. In the same category are Alabama, Alaska, Georgia, Louisiana, Mississippi, Virginia and counties in North Carolina, Arizona, Idaho and Maine.

[12] §5 of the Act.

[13] §6(b) of the Act.

[14] §14(b) of the Act.

[15] Literacy tests may continue to be enforced in most of Arizona, California, Connecticut, Delaware, Hawaii, most of Idaho and Maine, Massachusetts, New Hampshire, New York, parts of North Carolina, Oregon, Washington and Wyoming, all not covered by the Act.

[16] All states except those branded "guilty" (foot note 11) are free in this respect.

[17] See Complaint Exhibit C-1, Lines 2, 6, 18, 22, 28, 32 and 36, p. 18-19.

[18] §4(a) of the Act.

that residium of sovereignty not delegated to the United States by the Constitution itself,"[19]

and

"For equality of States means that they are not 'less or greater, or different in dignity or power'."[20]

and its firm application of those principles to prevent their violation by Congressional legislation,[21] the Congressional reasons for this constitutionally divergent treatment of Sister States and their political subdivisions demands this Court's sharpest examination.

There are three reasons given by the face of the Act:

(1) The enforcement of the Fifteenth Amendment to prevent illegal discrimination in the right to vote on account of race, color or previous condition of servitude,

(2) The failure of over 50% of South Carolina's inhabitants over the age of twenty-one to vote on November 3, 1964,[22] and

(3) The existence of South Carolina's literacy test as a prerequisite to voter qualification.

For these reasons, Congress and the President have concluded that South Carolina and her political subdivisions have racially discriminated in the administration of her literacy test as a prerequisite *to the registration of her citizens*, solely because of the failure of over 50% of her inhabitants *to vote* on November 3, 1964.[23]

To state the basis of the presumption is to reveal its arbitrariness. South Carolina is branded guilty of violating the Fifteenth Amendment *in the registration of her citizens*, solely because of the number who *actually voted*,

[19] *Coyle v. Smith*, 221 U.S. 559, 567.

[20] *U. S. v. Texas*, 339 U.S. 707, 720.

[21] *Coyle v. Smith*, supra; *Escanaba & L. N. Transportation Co. v. Chicago*, 107 U.S. 678. See also *Illinois Central Rrd. Co. v. Illinois*, 146 U.S. 387; *Butler v. Thompson*, 97 F. Supp. 17 (E. D. Va. 1951) aff. 341 U.S. 937.

[22] Actually 38% of South Carolina's inhabitants over 21 voted. By federal estimates, 56% of her inhabitants over 21 were then registered to vote. *Hearings*, H. R. 6400, Ser. No. 2, p. 29.

[23] The last two reasons would equally support the presumption of discrimination against women in voting in violation of the Nineteenth Amendment.

aside from any consideration of the degree to which her registered voters actually participated in the election.[24] The presumption finds discrimination by South Carolina when she had registered, on November 1, 1964, 56% of her inhabitants *with* a literacy test, but finds no discrimination by Arkansas (56% registered), Florida (54% registered), Kentucky (51% registered) and Texas (56.3% registered) who registered their citizens *without* a literacy test. The Act presumes discrimination on the part of South Carolina solely for her failure to vote over 50% of her inhabitants over age twenty-one on November 3, 1964, yet concludes there was no discrimination against the inhabitants of Arkansas, Texas and the District of Columbia who also voted less than 50% of their inhabitants over age twenty-one on that date.[25]

While so ignoring the voting records of other Sister States, the Act's arbitrary presumption equally ignores reported evidence presented to Congress prior to its passage. Repeatedly the Defendant testified that South Carolina was free of any continuing and numerous incidents of voter discrimination.[26] On the other hand, the record before the Congress in like manner revealed that other Sovereign States, not so restricted and proscribed by the Act, were guilty of the "massive discrimination" to which the Act supposedly was directed.[27]

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[24] See Complaint, Exhibits A and C-2, p. 18-19, 23. Compare the percentage turnout of registered voters in the counties with the highest percentage Negro population.

[25] If all of South Carolina's illiterates were excluded from the category of eligible population over 21, approximately 50% of her inhabitants over that age did vote on November 3, 1964. Complaint Exhibit A, p. 18-19.

Perhaps the best examples of the artificiality and arbitrariness of the statutory tests of the Act's application are found in the territories which it caught up. We seriously question the existence of any "massive discrimination" in Alaska, yet it is covered. So ridiculous was the coverage of Elmore County, Idaho and Aroostook County, Maine to prevent racial voter discrimination, that the Bureau of Census has not even bothered to certify their coverage. Complaint, Par. 22, Exh. F-3, p. 35-36. But see the statistics furnished Congress showing their coverage. *Hearings*, H.R. 6400 Ser. No. 2, p. 44; *Hearings*, S 1564 Pt. 2, 1513-1514.

[26] *Hearings*, H. R. 6400 Ser. No. 2, p. 12, 112-120; *Hearings* S 1564 Pt. 1, p. 17, 39. While admitting that some innocents were caught, the Defendant sought to justify the presumption as to South Carolina by alleged violations of the Fourteenth Amendment. See pp. 67 to 68, supra.

[27] *Hearings*, H. R. 6400, Ser. No. 2, p. 27, 76-77, 287.

Finally, the presumption of constitutional misconduct resulting in the Act's absolute application to South Carolina fails to permit examination of other factors which affected the number of her inhabitants who voted on November 3, 1964. Her recent history of a one-party Democratic primary system is worthy of judicial notice by this Court,[28] and has been reflected in the decisions of a United States District Court in her own territory. See *Elmore v. Rice*, 72 F. Supp. 216 (E.D.S.C. 1947). With the effective selection of her principal local and state officers occurring in her primaries, there has been no reason for general election participation by her inhabitants.[29] Perhaps even more significant has been the retarded economic and educational level of her residents, as compared to those of the inhabitants of many of her Sister States against whom her voting record was matched. See Complaint Exhibits D-1 and D-2, p. 24-25. It cannot validly be denied that these factors affect the interest of a citizenry in the participation in governmental affairs of a sovereign, nor that South Carolina's disabilities in this regard stem in large part from factors beyond her economic control, as recognized by this Court in *New York v. United States*, 331 U.S. 284.[30]

Against this background of the artificiality and arbitrariness of the presumption created by the Act, South Carolina would remind this Court of its previous warnings to Congress under the Fifth Amendment and to the Sovereign States under the Fourteenth Amendment, both embodying the principles of Equality of Statehood:

> "The provision therefore sweeps within its prohibition both knowing and unknowing members . . . 'In-

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[28] Compare *U. S. v. Classic*, 313 U.S. 299; *Ray v. Blair*, 334 U.S. 214; *U. S. v. Mississippi*, ___ U.S. ___, 13 L.ed. 2d 717; *U. S. v. Louisiana*, ___ U.S. ___, 13 L.ed. 2d 709.

[29] See Complaint, Exhibit CI, p. 21. See also *Hearings*, S 1564 Pt. 1, p. 267-269.

It is impossible to transmit proof to this Court of the widespread dissatisfaction with the National Democrtaic Party, and inherited dislike and distrust of the National Republican Party which kept many of her registered voters at home on November 3, 1964.

[30] For an interesting analysis of the effect of these factors in the 1956 General Election, see McCanaughy & Gauntlett, "A Survey of Urban Negro Voting Behavior in South Carolina," 14 S.C.L.Q. 365, 379 (1962).

discriminate classification of innocent with knowing activity must fall as an assertion of arbitrary power'." *Aptheker v. Secretary of State*, 378 U.S. 500, 510

"Classification 'must always rest upon some difference which bears a reasonable and just relation to the Act in respect to which classification is proposed, and can never be made arbitrarily and without any such basis . . . Arbitrary selection can never be justified by calling it classification', . . .

"The Courts much reach and determine the question of whether the classifications drawn in a statute are reasonable in light of its purpose—in this case, whether there is an arbitrary or invidious discrimination between those classes covered by Florida's cohabitation law and those excluded." *McLaughlin v. Florida*, ... U.S. ...., 13 L. ed. 2d 222, 227-228.

See also *Carrington v. Rasch*, ... U.S. ...., 13 L. ed 2d 675, 678; *United States* v. *Carolene Products Co.*, 304 U.S. 144, 153-154; *Chastleton Corporation v. Sinclair*, 264 U.S. 543, 547; *Bordens Farm Products Co. v. Baldwin*, 293 U.S. 194, 209-210.

The Defendant undoubtedly will contend this invidious presumption or classification is not constitutionally defective since the Plaintiff is afforded the opportunity by the Act to remove its restrictions. *But South Carolina is afforded no opportunity to rebut the statutory presumption of wrongdoing on November 3, 1964.*

The only relief granted South Carolina under the Act is the opportunity to prove, not that she was free of racial discrimination in the use of her literacy test when less than 50% of her inhabitants over twenty-one voted on November 3, 1964, *only* that no such discrimination has occurred in her borders within five years prior to the institution of her suit.[31] Thus the presumption of her wrongdoing on November 3, 1964 is *irrebuttable.*

[31] §4 of the Act. If the only discrimination occurred on the 365th day of the fifth year, the Act would still apply.

Heretofore this Court has not hesitated to strike down similar Congressional and State legislation affording no opportunity to refute the fact irrebuttably presumed by the legislation.

> "The presumption here excludes consideration of every fact and circumstance tending to show the real motive of the donor . . . and although the tax explicity is based upon circumstances that the thought of death must be the impelling cause of the transfer, . . . the presumption, nevertheless, precludes the ascertainment of the truth in respect of that requisite upon which the liability is made to rest . . ." *Heiner v. Donnan*, 285 U.S. 312, 327-328.

See also *Bailey v. Alabama*, 219 U.S. 219, 238-239; *Manley v. Georgia*, 279 U.S. 1, 5-6; *Western Atlantic Railroad v. Henderson*, 279 U.S. 639.

Even if such an irrebuttable presumption were constitutionally permissible in some contexts, it has the effect here of shifting to the Plaintiff and her inhabitants the overwhelming burden of proving their innocence because of a legislative conclusion completely unrelated to the facts to be disproved, in the absence of any direct proof of guilt by the accuser.

> "Due process demands that no man shall lose his liberty unless the government has borne the burden of producing the evidence and convincing the factfinder of his guilt." *Speiser v. Randall*, 357 U.S. 513, 526.

> "It is 'essential that there be some rational connection between the fact proved and the ultimate fact presumed, and that the inference of one fact from proof of another shall not be so unreasonable as to be a purely arbitrary mandate' . . . The presumption created here has no relation in experience to general facts. It has no foundation except with tacit reference to the plaintiff. But it is not within the province of a legislature to declare an individual guilty or presumptively guilty of a crime." *McFarland v. American Sugar Refining Co.*, 241 U.S. 79, 86.

See *Tot v. United States*, 319 U.S. 463, 467-468; *Morrison v. California*, 291 U.S. 82, 90-91.[32]

Finally, in judging the reasonableness and constitutionality of this legislative presumption directed solely to the Plaintiff and certain other "guilty" States, this Court should be fully aware that the Act limits South Carolina's judicial remedy for construction and review of its applicability, for a review of her prior conduct, and for determination of the acceptability of any new election laws which her inhabitants might desire, to a Federal Court over 400 miles from her borders in the District of Columbia.[33] While such a restriction has been held permissible for emergency wartime measures and the particular questions they raise,[34] there is no precedent in the history of this Union for the complete removal from her boundaries of the resolution of issues so vital to the continued constitutional existence of a Sovereign State and the government of her inhabitants.

In singling out the Plaintiff and certain other Sovereign States for the application of certain of its provisions solely because of an arbitrary and irrebuttable presumption, the Act violates the fundamental principles of Equality of Statehood, the rights preserved to the Plaintiff's inhabitants against the national sovereign under Article IV, §2 and the Fifth Amendment to the Constitution of the United States, and exceeds any powers granted Congress under the Fifteenth Amendment.

> "To this we may add that the constitutional Equality of States is essential to the harmonious operation of the scheme upon which the Republic was organized. When that equality disappears we may remain a free people, *but the Union will not be the Union of the Constitution.*"[35]

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[32] We question the ability of any Sovereign State to prove the absence of minimal discrimination in the administration of its laws when a substantial proportion of its population consists of a racial or foreign national origins minority. See the Defendant's opinion. *Hearings*, H. R. 6400, Ser. No. 2, p. 27.

[33] In this connection it is noteworthy that the Plaintiff is denied subpoena powers for witnesses over 100 miles distant from the District of Columbia, except with that Court's approval. Sec. 14d of the Act.

[34] *Bowles v. Willingham*, 321 U.S. 503; *Lockerty v. Phillips*, 319 U.S. 182.

[35] *Coyle v. Smith*, supra p. 580. [Emphasis added].

II

THE ACT, IN ABOLISHING THE PLAINTIFF'S LITERACY TEST, AND PURPORTING TO REGULATE HER ELECTIONS, VIOLATES HER RIGHT TO PRESCRIBE REASONABLE VOTER QUALIFICATIONS AND REGULATE HER ELECTIONS AS RECOGNIZED IN ARTICLE I, §§2 AND 4 AND THE SEVENTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES AND FURTHER IMPINGES UPON THE RIGHTS OF HER INHABITANTS UNDER THE FIFTH AMENDMENT AND ARTICLE IV, §2 OF THE CONSTITUTION OF THE UNITED STATES.

From its inception, the Constitution has specifically confirmed the reservation to the Sovereign States of their right to prescribe the qualifications of their voters and to regulate their elections generally.

> ". . . and the electors of each state shall have the qualifications requisite for electors of the most numerous branch of the State legislature." Article I, §2.
>
> "The times, places and manner of holding elections for Senators and Representatives, shall be prescribed in each State by the legislature thereof; . . ." Article I, §4.

Over forty years after the enactment of the Fifteenth Amendment, the members of the Constitutional compact again reaffirmed this distinctive division of powers between the National Sovereign and the States.

> ". . . the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature . . ." Seventeenth Amendment to the Constitution of the United States.

Likewise there perhaps has never been any principle of Constitutional law more consistently and firmly stated by this Court than that to the effect that the right to vote is derived from the State, not the National Sovereign, and

that it is to be exercised as the State may direct upon such conditions and qualifications as the State may prescribe, so long as that administration is free of racial and sex discrimination prohibited by the Fifteenth and Nineteenth Amendments. Beginning with *Minor v. Happersett*, 21 Wall 162 in 1875, where the Court said:

> "Certainly, if the courts can consider any question settled, this is one. For nearly ninety years the people have acted upon the idea that the Constitution, when it conferred citizenship, did not necessarily confer the right of sufferage. If uniform practice, long continued, can settle construction of so important an instrument as the Constitution of the United States confessedly is, most certainly it has been done here. Our province is to decide what the law is, not to declare what it should be." p. 177-178.

and continuing, among others, with:

United States v. Cruikshank, 92 U.S. 542
United States v. Harris, 106 U.S. 629
Wiley v. Sinkler, 179 U.S. 58
Mason v. Missouri, 179 U.S. 328
Pope v. Williams, 193, U.S. 621
Guinn v. United States, 238 U.S. 347
Breedlove v. Suttles, 302 U.S. 277
Snowden v. Hughes, 321 U.S. 1
Lassiter v. Northhampton Board of Election, 360 U.S. 45

and ending with *Carrington v. Rash*, ... U.S. ...., 13 L.ed 2d 675, decided in March of this year, in the language of Mr. Justice Stewart:

> "There can be no doubt either of the historic function of the States to establish on a non-discriminatory basis, and in accordance with the Constitution, other qualifications for the exercise of the franchise. Indeed, 'the States have long been held to have broad powers to determine the conditions upon which the right of sufferage may be exercised' . . . [citations

omitted] . . . In other words, the privilege to vote in a State is within the jurisdiction of the State itself, to be exercised as the State may direct, and upon such terms as to it may seem proper, provided, of course, no discrimination is made between individuals in violation of the Federal Constitution." p. 677-678

Concurrent with that principle is the constitutional rule, of equal stature, that:

> "The Fifteenth Amendment does not confer the right of sufferage upon anyone." *United States v. Reese*, 92 U.S. 214, 217
>
> "The Amendment did not add to the privileges and immunities of a citizen. It simply furnished an additional guaranty for protection for such as he already had. No new voters were necessarily made by it. Indirectly it may have had that effect, because it may have increased the number of citizens entitled to sufferage under the Constitution and laws of the States, but it operates for this purpose, if at all, through the States and the state laws, and not directly upon the citizen." *Minor v. Happersett*, supra, p. 171

Guinn v. United States, supra; *Pope v. Williams*, supra; *McPherson v. Blacker*, 146 U.S. 1.

The Act flies in the teeth of these traditional and basic Constitutional principles. In whatever posture viewed, §4, under the authority of the National Sovereign, effectively *grants the right to vote*, in all local, state and federal elections, to the Plaintiff's illiterate inhabitants over twenty-one, *a right specifically denied under her Constitution and laws.*[36]

This flagrant violation of the compact is not saved by its operation being related to a Congressional presumption of conduct in November 1964. In the apt language of this Court:

[36] Congressional legislation reducing the voting age to 14 could be no more unconstitutional.

"But where the conduct or fact, the existence of which is made the basis of the statutory presumption, itself falls within the scope of a provision of the Federal Constitution, a further question arises. It is apparent that a constitutional prohibition cannot be transgressed indirectly by the creation of a statutory presumption any more than it can be violated by direct enactment. The power to create presumptions is not a means of escape from constitutional restriction . . ." *Bailey v. Alabama*, 219 U.S. 219, 239.

In short, Congress has no power by presumption or otherwise, to prevent South Carolina from imposing lawful qualifications for her electors, a function delegated and reserved to her by the Constitution.

Nor can it be contended that the literacy test eliminated by the Act is an unlawful qualification. Only six years ago this Court recognized the Sovereign's reasons, in the interest of better government, for requiring such tests, and sustained their constitutionality.

"The ability to read and write likewise has some relation to standards designed to promote intelligent use of the ballot. Literacy and illiteracy are neutral on race, creed, color and sex as reports around the world show. Literacy and intelligence are obviously not synonymous. Illiterate people may be intelligent voters. Yet in our society when newspapers, periodicals, books and other printed matter canvass and debate campaign issues, a State might conclude that only those who are literate could exercise the franchise . . . [citations omitted] . . . It was said last century in Massachusetts that a literacy test was designed to insure an 'independent and intelligent' exercise of the right of sufferage . . . [citations omitted] . . . North Carolina agrees. We do not sit in judgment on the wisdom of that policy. We cannot say, however, that it is not an allowable one measured by Constitutional standards." *Lassiter v. Northhampton Board of Elections*, 360 U.S. 45, 52-53.

Guinn v. United States, supra, p. 336.[37]

Similarly, in striking down her literacy test, the Act violates the right of South Carolina's inhabitants to have the votes of their electorate accorded equal weight. Through their lawful literacy test, they have chosen a literate electorate in the interest of achieving the best government. To require the votes of illiterates to be counted is to dilute and debase the voice of the literate electorate which they chose. In the language of Mr. Chief Justice Warren:

> "The right to vote freely for the candidate of one's choice is of the essence of a Democratic society, and any restrictions on that right strike at the heart of representative government. And the right of sufferage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise." *Reynolds v. Sims*, 377 U.S. 533, 555.

The Fifth Amendment denies to Congress the right to dilute the sufferage rights of the Plaintiff's inhabitants, which she may not voluntarily so do under the Fourteenth Amendment.

But the Congress and President did not stop with simply granting certain inhabitants of South Carolina the right to vote by striking down her literacy test. The Act creates a system of Federal regulation for Plaintiff's entire election procedures. She may not change ". . . any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting . . ." without approval by the Defendant or the United States District Court for the District of Columbia.[38] The Defendant is free to send in Federal officials to register South Carolina inhabitants and oversee her elections, at times and places

[37] It is noteworthy that the Plaintiff's test is about the simplist that could be required. Complaint, Par. 12 and Exh. B, p. 20. See *Hearings*, H. R. 6400, Ser. No. 2, p. 30; *Hearings*, S 1564, Pt. 2, p. 1460-1469.

[38] §5 of the Act.
Presumably, South Carolina could not now, without such approval, voluntarily remove her literacy test.

and under procedures prescribed by Federal officials.[39] Under such circumstances the Plaintiff is required to conform to Federal standards for preserving and handling her election records.[40]

Even more significant, Federal criminal law invades the area of South Carolina's criminal election prohibitions, heretofore exclusively reserved to her. Without regard to any discrimination because of race, color or sex, the Act makes criminal under Federal law a broad spectrum of conduct designed to interfere with the right to vote, the right to register, the right to urge or aid any person to vote or register, or the right to have one's vote tabulated.[41] This conduct, made a major crime (felony), is condemned *in spite* of the belief of a state election official that his acts conform to federal and state laws. Thus he *refuses* anyone the right to register and vote at the risk of *personal* federal criminal conviction. Furthermore such conduct is made criminal even though the Acts of the wrongdoer could not be those "of the State" within the Fifteenth Amendment. These provisions apply to *all* elections, local and state, as well as federal.

On several occasions this Court has declared almost identical legislation in violation of the Constitution:

> "Congress has no power to punish bribery at all elections. The limits of its power are in respect to elections in which the Nation is directly interested, or in which some mandate of the National Constitution is disobeyed; . . ." *James v. Bowman*, 190 U.S. 127, 142.

And again, declaring such Congressional legislation void in the fresh perspective of the passage of the Fifteenth Amendment, this Court said:

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[39] §§6(b), 7, 9(b) of the Act.

[40] §12(b) of the Act.

[41] §§11 and 12 of the Act.
In addition, in elections for federal officials *only*, vote bribery and false registration is made a federal crime. If she has no such provision for local elections, the creation of such a crime by the State is prohibited, without Federal approval.

"It has not been contended, nor can it be, that the Amendment confers authority to impose penalties for every wrongful refusal to receive the vote of a qualified elector at state elections. It is only when the wrongful refusal at such an election is because of race, color or previous condition of servitude, that Congress can interfere and provide for its punishment. If, therefore, the third and fourth sections of the Act are beyond that limit, they are unauthorized." *United States v. Reese*, 92 U.S. 214, 218.

United States v. Harris, 106 U.S. 629; *Ex Parte Siebold*, 100 U.S. 371, 393.

If this legislation be held valid, in spite of its blatant violation of these, to date, established constitutional principles protecting the rights of Sovereign States, what are the limits of the National Sovereign with respect to the areas reserved to the States? In comparable era of civil rights struggle, eighty-five years ago, this Court said:

"The true interest of the people of this country requires that *both* the National and State governments should be allowed, without jealous interference on either side, to exercise all the powers which respectively belong to them according to a fair and practical construction of the Constitution. States rights and the rights of the United States should be equally respected. *Both* are essential to the preservation of our liberties and the perpetuity of our institutions. But, in endeavoring the one, we should not allow our zeal to nullify or impair the other." *Ex Parte Seibold*, supra, p. 394 [Emphasis added]

III

EVEN IF CONGRESS WERE NOT PROHIBITED FROM ENACTING THIS LEGISLATION, THE ACT IS NOT "APPROPRIATE" AND THEREFORE VIOLATES THE FIFTEENTH AMENDMENT.

Aside from its obvious abrogation of the existing constitutional rights of South Carolina and her inhabitants,

the Act is not "appropriate" legislation to enforce the Fifteenth Amendment, as that Amendment specifically requires.[42] As strictly a Government of delegated powers with limited authority,[43] the National Soveregn can only legislate in a manner necessary and appropriate for the purposes sought to be accomplished—an indeterminate sweep across the rights of others is void.[44]

As this Court only last year courageously asserted in striking down legislation directed to known enemies of the Union:

> "[E]ven though the governmental purposes be legitimate and substantial, that purpose cannot be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved. The breadth of legislative abridgement must be viewed in light of less drastic means for achieving the same basic purpose." *Aptheker v. Secretary of State*, 378 U.S. 500, 508.

In view of these principles the Act clearly does not comply with §2 of the Fifteenth Amendment, both as drawn and applied to South Carolina.

Existing legislation to enforce specific violations of the Fifteenth Amendment have existed for some time.[45] However, as Defendant and others testified before Congress, this legislation was designed to deal with "massive racial

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[42] No attempt will be made to repeat much of what has been said that is equally applicable here.

[43] "The government of the United States is one of delegated powers alone. Its authority is defined and limited by the Constitution. All powers not granted to it by that instrument are reserved to the States or the people. No rights can be acquired under the Constitution or laws of the United States, except such as the government of the United States has the authority to grant or secure. All that cannot be granted or secured are left under the protection of the States." *United States v. Cruikshank*, 92 U.S. 542, 551.

[44] *Smith v. California*, 361 U.S. 147; *Slochower v. Board of Education*, 350 U.S. 551; *Railroad Retirement Board v. Alton Rrd. Co.*, 295 U.S. 330, 374.

[45] *Civil Rights Acts of 1964, 1960 and 1957.* 18 U.S.C. 837, 1074, 1509; 20 U.S.C. 241, 640; 42 U.S.C. 1971, 1974-1975, 2000; 28 U.S.C. 1447; 5 U.S.C. 2204-2205.

discrimination" in the right to vote.[46] As such, however, according to the evidence before Congress, it does not purport to reach areas where such discrimination exists, in some of which the continued enforcement of literacy tests is permitted by the Act.[47] On the other hand, according to the Defendant, the Act applies to some innocent, as well as guilty, states and subdivisions.[48]

Yet the Act would be held "appropriate" because of a great and long-standing emergency need to correct violations of the Fifteenth Amendment. In more troublesome times than these, this Court has refused to push aside constitutional principles for such an excuse.

> "The Constitution of the United States is a law for rulers and people, equally in war and in peace, and covers with the shield of its protection all classes of men, at all times, and under all circumstances. No doctrine, involving more pernicious consequences, was ever invented by the wit of man than that any of its provisions can be suspended during any of the great exigencies of government. Such a doctrine leads directly to anarchy or despotism, but the theory of necessity on which it is based is false; for the government, within the Constitution, has all the powers granted to it which are necessary to preserve its existence, as has been happily proved by the result of the great effort to throw off its just authority." *Ex Parte Milligan*, 4 Wall 2, 120[49]

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[46] See Footnotes 26 and 27, supra.

Actually most of the Act's criticism before Congress came from those objecting to its limited coverage. These objectors preferred a test, tied to registration percentages, which would authorize Federal Examiners to enforce fairly existing State law. See *Hearings*, H. R. 600, Ser. No. 2; *Hearings*, S 1564, Pt. 1. Query, a lesser remedy more constitutional, possibly overlooked in the Congressional haste to pass the Act? See opening remarks of Chairman Celler, *Hearings*, H. R. 6400, Ser. No. 2, p. 1-2.

[47] *Hearings*, H. R. 6400, Ser. No. 2, 68-69, 75-76, 89, 273-284, 362-364, 368-369, 373, 405, 418-421, 461-462, 508-518, 527-529, 674, 714; *Hearings* S 1564 Pt. 1, p. 246, 258, 339.

[48] *Hearings*, H. R. 6400, Ser. No. 2, p. 62, 105; *Hearings*, S 1564, Pt. 1, p. 20, 28, 62, 87, 86—also 28.

[49] For a similar statement in severely trying economic times see *Schecter Poultry Corp. v. United States*, 295 U.S. 495, 528-529.

Even so what is the "emergency" as to South Carolina? While she would not deny that there might have been incidents of a wrongful application of her election laws from time to time, she asserts that these practices have never in recent years been widespread, substantial, or "massive."[50] When such incidents have occurred, they have been voluntarily corrected by her political subdivisions, officials and inhabitants, as proven by the complete absence of any voter discrimination suits in South Carolina by the Defendant and his predecessors under existing legislation. The failure of the Defendant, to date, to send federal examiners into her borders under this Act is further evidence of this fact. Neither does South Carolina have any recent history of legislative attempts to deprive her inhabitants of the right to vote similar to that which this Court found in other Sovereign States.[51] The contrary is fact. See Appendix A.

What then is the basis of the Act being "appropriate" as to South Carolina? Before Congress, the Defendant charged that she stood guilty of racial discrimination in the operation of her schools, transportation and parks.[52] As heretofore indicated, to be "appropriate" the Act must be an exercise of the Fifteenth Amendment powers which it purports to enforce, not those of the Fourteenth Amendment.

Even so this Court's attention is directed to those grounds. The educational laws to which the Defendant referred were declared unconstitutional in 1954,[53] and on August 1, 1965, prior to the Act's passage, 103 of South Carolina's 108 school districts had filed "compliance plans" with the United States Department of Health, Education and Welfare.[54] The transportation laws to which the Defendant referred state the old "separate but equal" doc-

[50] Surely the long-past conduct of her prior government cannot now make this legislation constitutional. Compare the reasoning of Mr. Justice Black dissenting in *Bell v. Maryland*, 378 U.S. 226, 234.

[51] *United States v. Louisiana*, supra, *United States v. Mississippi*, supra.

[52] *Hearings*, H. R. 6400, Ser. No. 2, p. 38-39; *Hearings*, S. 1564, Pt. 2, p. 1493-1496.

[53] §21-751, 1962 Code of Laws, South Carolina; *Brown v. Board of Education*, 347 U.S. 483.

[54] From the public records maintained in the office of the South Carolina Superintendent of Education.

trine for railroads and steamships and have not been observed for years.[55] Racial restrictions for her public parks were removed in 1964.[56]

Thus, in view of its application to the innocent, its failure to reach areas where known voter racial discrimination exists, and the absence of any "need" for its application to South Carolina, the Act is not "appropriate" legislation as required by the Fifteenth Amendment.

IV

THE ACT IN DEPRIVING THE PLAINTIFF AND HER INHABITANTS OF THEIR CONSTITUTIONAL RIGHTS SOLELY BECAUSE OF THE FAILURE OF CERTAIN OF HER ELECTORATE TO VOTE IN NOVEMBER 1964, IS A BILL OF ATTAINDER AND *EX POST FACTO* LAW PROHIBITED BY ARTICLE I, §9 OF THE CONSTITUTION OF THE UNITED STATES AND FURTHER CONSTITUTES AN UNLAWFUL ATTEMPT BY CONGRESS TO EXERCISE POWERS EXCLUSIVELY RESERVED TO THE JUDICIARY UNDER ARTICLE III OF THE CONSTITUTION.

Until the passage of this Act, the only legal consequence which flowed from the failure of any specific number of South Carolina's registered voters to vote in a given election was the victory of the successful candidate. This was the law and the sole consequence on November 3, 1964 when 32% of her registered voters chose not to vote in the Presidential contest. Yet on August 6, 1965 the Congress and the President, through this Act, attempted to deprive South Carolina, indefinitely, of the right to prescribe reasonable

[55] §58-714, 1962 Code of Laws, South Carolina.
In this connection the Court should understand that South Carolina's Constitution requires a re-codification of her laws every ten years. Article VI, §5 Constitution of 1896. As a practical matter, the Code Commissioner, charged with this duty, often carries forward, in each re-codification, existing Code provisions not directed to be deleted by intervening acts of the legislature. The existence in the Code does not mean that they are the law of South Carolina. *Gamble v. Clarendon County*, 188 S.C. 250, 198 S.E. 857; *Ridgill v. Clarendon County*, 188 S.C. 460, 199 S.E. 683.

[56] §51-2.1-2.4, 1962 Code of Laws, South Carolina, 1965 Supplement. See *Brown v. S. C. State Forestry Commission*, 226 F. Supp. 646 (E.D.S.C. 1963).

qualifications for her electors and generally control her elections, at all politicial levels solely because over 50% of her electorate so chose not to vote.

Such invidious legislation has not heretofore survived the scrutiny of this Court. Speaking through Mr. Justice Black this Court struck down a similar Congressional act, as a Bill of Attainder and *ex post facto* law, which was designed to deprive certain individuals of future government employment, saying:

> "Those who wrote our Constitution well knew the danger inherent in special legislative acts which take away the life, liberty or property of particular named persons, because the legislature thinks them guilty of conduct which deserves punishment. They intended to safeguard the people of this country from punishment without trial by duly constituted courts. . . .
>
> "When our Constitution and Bill of Rights were written, our ancestors had ample reason to know that legislative trials and punishments were too dangerous to liberty to exist in the nation of free men they envisioned. And so they proscribed bills of attainder." *United States v. Lovett*, 328 U. S. 303, 317-318.

The Court relied heavily on its previous decisions in *Cummings v. Missouri*, 4 Wall 277 and *Ex Parte Garland*, 4 Wall 333, saying:

> "They stand for the proposition that legislative acts, no matter what their form, that apply either to named individuals or to easily ascertainable members of a group in such a way as to inflict punishment upon them without a judicial trial are bills of attainder prohibited by the Constitution." p. 315

There can be no doubt that the Act applies specifically to South Carolina and to certain other Sovereigns as if named therein.[57] Neither is there any doubt that the Act invokes a "punishment". Certainly the deprivation of the

[57] The entire legislative history of the Act makes it amply clear that Congress knew exactly which states would be covered. See, eg., *Hearings* H. R. 6400, Ser. No. 2, p. 29; *Hearings*, S 1564, Pt. 2, p. 1458-1461.

rights of a Sovereign State and her inhabitants to exercise basic constitutional rights essential to their government is more severe than the denial of future federal employment[58] or the right to practice in the Federal courts.[59]

Neither is this fatal nature of the Act cured by the opportunity it grants the Plaintiff to "purge" herself by proof in the District of Columbia of the absence of discrimination for five previous years. In view of the arbitrary basis for the Act's application, this Court's reply to a similar argument is most appropriate.

> "The clauses in question subvert the presumptions of innocence, and alter the rules of evidence, which heretofore, under the universally recognized principles of the common law, have been supposed to be fundamental and unchangeable. They assume that the parties are guilty; they call upon the parties to establish their innocence; and they declare that such innocence can be shown only in one way—by an inquisition, in the form of an expurgatory oath, into the consciences of the parties." *Cummings v. Missouri*, supra, p. 328

For the same reasons the Act constitutes an attempt by Congress to exercise judicial powers. The distinction from legislative functions is clear:

> "A judicial inquiry investigates, declares and enforces liabilities as they stand on present or past facts and under laws supposed already to exist. That is its purpose and end. Legislation, on the other hand, looks to the future and changes existing conditions by making a new rule, *to be applied thereafter* to all or some part of those subject to its power." *Prentice v. Atlantic Coast Line Company*, 211 U. S. 210, 226 [Emphasis added]

The Act attempts to adjudge South Carolina guilty because of previous lawful conduct.

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[58] *United States v. Lovett*, supra.

[59] *Ex Parte Garland*, supra.

"Mere legislative fiat may not take the place of fact in the determination of issues involving life, liberty or property. . . ." *Manley v. Georgia*, supra, p. 5-6

See *McFarland v. American Sugar Refining Co.*, 241 U. S. 79, 86-87. As the author of the *Lovett* decision stated:

". . . .[F]or the crime of communism, like all others, can be punished only by court and jury after a trial with all judicial safeguards." *Barenblatt v. United States*, 360 U. S. 109, 160 (Dissenting opinion)

There is no room in a constitutional republic for such arbitrary and invidious legislation.

CONCLUSION

For the foregoing reasons, South Carolina requests that permission to file her Complaint be granted, and that she be awarded the relief requested therein.

Respectfully Submitted,

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September 1965

APPENDIX A

PERTINENT CHANGES IN THE CONSTITUTION AND LAWS OF SOUTH CAROLINA REGULATING GENERAL ELECTIONS IN RECENT YEARS

1. South Carolina Constitution of 1896

Though the changes have not been frequent, they are significant.

a. ARTICLE II, §4(a). Residence requirements

In order to register to vote, this provision originally required the applicant to have resided in the State two years, in the County one year and in his polling precinct four months. An exception for ministers and teachers required only six months residence in the State. The applicant was required to have paid all due poll taxes six months prior to registration.

In 1930, an amendment removed all references to poll taxes. 1931 Stat. (37), 105.

In 1958, an exception was added reducing to six months the residence requirements for the spouse of ministers or teachers.

In 1964, residence requirements were reduced to one year in the State, six months in the County and three months in the precinct.

b. ARTICLE II, §4(e). Poll Taxes

This provision originally required the proof of payment of all poll taxes as a prerequisite to registration.

In 1930, in conjunction with the amendment of ARTICLE II, §4(a) above, a provision was inserted to require proof of such taxes having been paid over thirty days prior to registration. (These changes reduced the period from six months to thirty days.) 1931 Stat. (37) 105

In 1950, the requirement of proof of payment of poll taxes as a prerequisite to register was eliminated. 1951 Stat. (47) 34

c. ARTICLE II, §10. Primaries

This section originally provided that the General Assembly should provide for the regulation of party primaries.

It was repealed in 1944. 1945 Stat. (44) 10

Each of these Constitutional amendments were reflected in appropriate statute changes.

2. Statutes

In 1896, in conjunction with the adoption of a new Constitution, the legislature adopted a new election code, which for the most part simply adopted the Constitutional provisions. County Commissioners to supervise elections were established, directed to open the polls on election days from 7:00 A.M. to 4:00 P.M. and to provide paper ballots. 1896 Stat. (22) 29. Otherwise Commissioners were generally left free to administer the elections.

County Boards of Registration were established and the Secretary of State directed to furnish them appropriate registration books and forms. The registration books were to be opened the first Monday in each month and for three successive days (during election years) and closed thirty days before each election, except with respect to those coming of age in this period, who could be registered. Provision was made for the form of the registration certificate, the individuals removal from one precinct to another, and for replacing lost or destroyed certificates. Appeal to the Clerk of Court and the Courts was provided for a refusal to register. Registration every ten years, beginning in 1898, was required. 1896 Stat. (22) 33, *et seq.*

Changes:

(1) With one exception, no major pertinent changes made until 1950.

In 1944 Catawba Indians were granted the right to vote, if otherwise qualified. 1944 Stat. (43) 1208

(2) In 1950, a new election law covering general

elections and primaries was enacted. 1950 Stat. (46) 2059. While some of the old provisions were retained, many pertinent changes and new provisions were added.

(a) Polls were required to be open from 8:00 A.M. to 6:00 P.M.

(b) A minimum number of booths were required, depending upon the number of residents registered in the precinct. Similar requirements for boxes, numbers of ballots, guard rails and managers' tables were added.

(c) Maximum time for the occupancy of a booth or voting machine was stipulated.

(d) Specific procedures for assisting disabled voters were provided.

(e) Persons in line when the polls closed were allowed to vote.

(f) Copies of Constitutional amendments were required to be posted at the polling place.

(g) Voting machines were authorized. Provision was made for their inspection, for instruction in their use and assistance when needed, and for their custody, repair, etc.

(h) Criminal penalties for fraudulent registration, vote bribery and for many forms of election violations and the prevention of voting were extended.

(i) No person was to be disqualified because of the receipt of public welfare or aid.

(j) An applicant for registration was required to take an oath to the effect that he met the Constitutional qualifications. 1951 Stat. (47) 78

(3) In 1953 provisions were added for absentee voting and registration for members of the Armed Forces, Merchant Marines and overseas employees of Red Cross and United States Government. 1953 Stat. (48) 423

(4) In 1957 a uniform application form for registration was provided. 1957 Stat. (50) 671. See Complaint, Ex. B, p. 20

(5) In 1958, disabled, but otherwise qualified registration applicants were permitted to sign the form by their mark, with registrar assistance. 1958 Stat. (50) 1591

(6) In 1960 absentee voting and registration was expanded to include the spouse of covered citizens. 1960 Stat. (51) 1598

(7) In 1965, hours for the opening of polling places were expanded to from 8:00 A.M. to 7:00 P.M. 1965 Stat. (....) 466

APPENDIX B

Constitutional Provisions and Voting Rights Act of 1965

1. Pertinent Sections of Constitution of United States.

a. Article I, Sec. 2.

The House of Representatives shall be composed of members chosen every second year by the people of the several states, and the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature.

b. Article I, Sec. 4.

The times, places and manner of holding elections for Senators and representatives, shall be prescribed in each state by the legislature thereof; but the Congress may at any time by law make or alter such regulations, except as to the places of choosing Senators.

c. Article I, Sec. 9, Clause 3.

No bill of attainder or ex post facto law shall be passed.

d. Article III, Sec. 1.

The judicial power of the United States, shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the Supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services, a compensation, which shall not be diminished during their continuance in office.

e. Article IV, Sec. 2.

The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.

A person charged in any state with treason, felony, or other crime, who shall flee from justice, and be found in another state, shall on demand of the executive authority of the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime.

No person held to service or labor in one state, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due.

f. Fifth Amendment.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

g. Tenth Amendment.

The powers not delegated to the United States by the Constitution, nor prohibited by it to the the states, are reserved to the states respectively, or to the people.

h. Fourteenth Amendment.

§ 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or en-

force any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

§ 2.

Representatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, representatives in Congress, the executive and judicial officers of a state, or the members of the legislature thereof, is denied to any of the male inhabitants of such state, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such state.

§ 3.

No person shall be a Senator or representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any state, who having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any state legislature, or as an executive or judicial officer of any state, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two thirds of each house, remove such disability.

§ 4.

The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any state shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

§ 5.

The Congress shall have power to enforce by appropriate legislation, the provisions of this article.

i. Fifteenth Amendment.

§ 1.

The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of race, color, or previous condition of servitude.

§ 2.

The Congress shall have power to enforce this article by appropriate legislation.

j. Seventeenth Amendment.

The Senate of the United States shall be composed of two Senators from each state, elected by the people thereof, for six years; and each Senator shall have one vote. The electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislatures.

When vacancies happen in the representation of any state in the Senate, the executive authority of such state shall issue writs of election to fill such

vacancies: *Provided,* That the legislature of any state may empower the executive thereof to make temporary appointments until the people fill the vacancies by election as the legislature may direct.

This amendment shall not be so construed as to affect the election or term of any Senator chosen before it becomes valid as part of the Constitution.

k. Nineteenth Amendment.

The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of sex.

Congress shall have power to enforce the provisions of this article by appropriate legislation.

2. VOTING RIGHTS ACT OF 1965

AN ACT

To enforce the fifteenth amendment to the Constitution of the United States, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act shall be known as the "Voting Rights Act of 1965".

Sec. 2. No voting qualification or prerequisite to voting, or standard, practice, or procedure shall be imposed or applied by any State or political subdivision to deny or abridge the right of any citizen of the United States to vote on account of race or color.

Sec. 3. (a) Whenever the Attorney General institutes a proceeding under any statute to enforce the guarantees of the fifteenth amendment in any State or political subdivision the court shall authorize the appointment of Federal examiners by the United States Civil Service Commission in accordance with section 6 to serve for such period of time and for such political subdivisions as the court shall determine is appropriate to enforce the guarantees of the fifteenth amendment (1) as part of any interlocutory order

if the court determines that the appointment of such examiners is necessary to enforce such guarantees or (2) as part of and final judgment if the court finds that violations of the fifteenth amendment justifying equitable relief have occurred in such State or subdivision: *Provided*, That the court need not authorize the appointment of examiners if any incidents of denial or abridgement of the right to vote on account of race or color (1) have been few in number and have been promptly and effectively corrected by State or local action, (2) the continuing effect of such incidents has been eliminated, and (3) there is no reasonable probability of their recurrence in the future.

(b) If in a proceeding instituted by the Attorney General under any statute to enforce the guarantees of the fifteenth amendment in any State or political subdivision the court finds that a test or device has been used for the purpose or with the effect of denying or abridging the right of any citizen of the United States to vote on account of race or color, it shall suspend the use of tests and devices in such State or political subdivisions as the court shall determine is appropriate and for such period as it deems necessary.

(c) If in any proceeding instituted by the Attorney General under any statute to enforce the guarantees of the fifteenth amendment in any State or political subdivision the court finds that violations of the fifteenth amendment justifying equitable relief have occurred within the territory of such State or political subdivision, the court, in addition to such relief as it may grant, shall retain jurisdiction for such period as it may deem appropriate and during such period no voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect at the time the proceeding was commenced shall be enforced unless and until the court finds that such qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color: *Provided*, That

such qualification, prerequisite, standard, practice, or procedure may be enforced if the qualification, prerequisite, standard, practice, or procedure has been submitted by the chief legal officer or other appropriate official of such State or subdivision to the Attorney General and the Attorney General has not interposed an objection within in sixty days after such submission, except that neither the court's finding nor the Attorney General's failure to object shall bar a subsequent action to enjoin enforcement of such qualification, prerequisite, standard, practice or procedure.

Sec. 4. (a) To assure that the right of citizens of the United States to vote is not denied or abridged on account of race or color, no citizen shall be denied the right to vote in any Federal, State, or local election because of his failure to comply with any test or device in any State with respect to which the determinations have been made under subsection (b) or in any political subdivision with respect to which such determinations have been made as a separate unit, unless the United States District Court for the District of Columbia in an action for a declaratory judgment brought by such State or subdivision against the United States has determined that no such test or device has been used during the five years preceding the filing of the action for the purpose or with the effect of denying or abridging the right to vote on account of race or color: *Provided*, That no such declaratory judgment shall issue with respect to any plaintiff for a period of five years after the entry of a final judgment of any court of the United States, other than the denial of a declaratory judgment under this section, whether entered prior to or after the enactment of this Act, determining that denials or abridgments of the right to vote on account of race or color through the use of such tests or devices have occurred anywhere in the territory of such plaintiff.

An action pursuant to this subsection shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of title 28 of the United

States Code and any appeal shall lie to the Supreme Court. The court shall retain jurisdiction of any action pursuant to this subsection for five years after judgment and shall reopen the action upon motion of the Attorney General alleging that a test or device has been used for the purpose or with the effect of denying or abridging the right to vote on account of race or color.

If the Attorney General determines that he has no reason to believe that any such test or device has been used during the five years preceding the filing of the action for the purpose or with the effect of denying or abridging the right to vote on account of race or color, he shall consent to the entry of such judgment.

(b) The provisions of subsection (a) shall apply in any State or in any political subdivision of a state which (1) the Attorney General determines maintained on November 1, 1964, any test or device, and with respect to which (2) the Director of the Census determines that less than 50 per centum of the persons of voting age residing therein were registered on November 1, 1964, or that less than 50 per centum of such persons voted in the presidential election of November 1964.

A determination or certification of the Attorney General or of the Director of the Census under this section or under section 6 or section 13 shall not be reviewable in any court and shall be effective upon publication in the Federal Register.

(c) The phrase "test or device" shall mean any requirement that a person as a prerequisite for voting or registration for voting (1) demonstrate the ability to read, write, understand, or interpret any matter, (2) demonstrate any educational achievement or his knowledge of any particular subject, (3) possess good moral character, or (4) prove his qualifications by the voucher of registered voters or members of any other class.

(d) For purposes of this section no State or political subdivision shall be determined to have engaged in the use

of tests or devices for the purpose or with the effect of denying or abridging the right to vote on account of race or color if (1) incidents of such use have been few in number and have been promptly and effectively corrected by State or local action, (2) the continuing effect of such incidents has been eliminated, and (3) there is no reasonable probability of their recurrence in the future.

(e) (1) Congress hereby declares that to secure the rights under the fourteenth amendment of persons educated in American-flag schools in which the predominant classroom language was other than English, it is necessary to prohibit the States from conditioning the right to vote of such persons on ability to read, write, understand, or interpret any matter in the English language.

(2) No person who demonstrates that he has successfully completed the sixth primary grade in a public school in, or a private school accredited by, any State or territory, the District of Columbia, or the Commonwealth of Puerto Rico in which the predominant classroom language was other than English, shall be denied the right to vote in any Federal, State, or local election because of his inability to read, write, understand, or interpret any matter in the English language, except that in States in which State law provides that a different level of education is presumptive of literacy, he shall demonstrate that he has successfully completed an equivalent level of education in a public school in, or a private school accredited by, any State or territory, the District of Columbia, or the Commonwealth of Puerto Rico in which the predominant classroom language was other than English.

Sec. 5. Whenever a State or political subdivision with respect to which the prohibitions set forth in section 4(a) are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1964, such State or subdivision may institute an action in the United States District Court for the District of Columbia for a declaratory

judgment that such qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color, and unless and until the court enters such judgment no person shall be denied the right to vote for failure to comply with such qualification, prerequisite, standard, practice, or procedure: *Provided*, That such qualification, prerequisite, standard, practice, or procedure may be enforced without such proceeding if the qualification, prerequisite, standard, practice, or procedure has been submitted by the chief legal officer or other appropriate official of such State or subdivision to the Attorney General and the Attorney General has not interposed an objection within sixty days after such submission, except that neither the Attorney General's failure to object nor a declaratory judgment entered under this section shall bar a subsequent action to enjoin enforcement of such qualification, prerequisite, standard, practice, or procedure. Any action under this section shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of title 28 of the United States Code and any appeal shall lie to the Supreme Court.

Sec. 6. Whenever (a) a court has authorized the appointment of examiners pursuant to the provisions of section 3(a), or (b) unless a declaratory judgment has been rendered under section 4(a), the Attorney General certifies with respect to any political subdivision named in, or included within the scope of, determinations made under section 4(b) that (1) he has received complaints in writing from twenty or more residents of such political subdivision alleging that they have been denied the right to vote under color of law on account of race or color, and that he believes such complaints to be meritorious, or (2) that in his judgment (considering, among other factors, whether the ratio of nonwhite persons to white persons registered to vote within such subdivision appears to him to be reasonably attributable to violations of the fifteenth amendment or whether substantial evidence exists that bona fide efforts

are being made within such subdivision to comply with the fifteenth amendment), the appointment of examiners is otherwise necessary to enforce the guarantees of the fifteenth amendment, the Civil Service Commission shall appoint as many examiners for such subdivision as it may deem appropriate to prepare and maintain lists of persons eligible to vote in Federal, State, and local elections. Such examiners, hearing officers provided for in section 9(a), and other persons deemed necessary by the Commission to carry out the provisions and purposes of this Act shall be appointed, compensated, and separated without regard to the provisions of any statute administered by the Civil Service Commission, and service under this Act shall not be considered employment for the purposes of any statute administered by the Civil Service Commission, except the provisions of section 9 of the Act of August 2, 1939, as amended (5 U.S.C. 118i), prohibiting partisan political activity: *Provided*, That the commission is authorized, after consulting the head of the appropriate department or agency, to designate suitable persons in the official service of the United States, with their consent, to serve in these positions. Examiners and hearing officers shall have the power to administer oaths.

Sec. 7. (a) The examiners for each political subdivision shall, at such places as the Civil Service Commission shall by regulation designate, examine applicants concerning their qualifications for voting. An application to an examiner shall be in such form as the Commission may require and shall contain allegations that the applicant is not otherwise registered to vote.

(b) Any person whom the examiner finds, in accordance with instructions received under section 9(b), to have the qualifications prescribed by State law not inconsistent with the Constitution and laws of the United States shall promptly be placed on a list of eligible voters. A challenge to such listing may be made in accordance with section 9(a) and shall not be the basis for a prosecution under section 12 of this Act. The examiner shall certify and

transmit such list, and any supplements as appropriate, at least once a month, to the offices of the appropriate election officials, with copies to the Attorney General and the attorney general of the State, and any such lists and supplements thereto transmitted during the month shall be available for public inspection on the last business day of the month and in any event not later than the forty-fifth day prior to any election. The appropriate State or local election official shall place such names on the official voting list. Any person whose name appears on the examiner's list shall be entitled and allowed to vote in the election district of his residence unless and until the appropriate election officials shall have been notified that such person has been removed from such list in accordance with subsection (d): *Provided*, That no person shall be entitled to vote in any election by virtue of this Act unless his name shall have been certified and transmitted on such a list to the offices of the appropriate election officials at least forty-five days prior to such election.

(c) The examiner shall issue to each person whose name appears on such a list a certificate evidencing his eligibility to vote.

(d) A person whose name appears on such a list shall be removed therefrom by an examiner if (1) such person has been successfully challenged in accordance with the procedure prescribed in section 9, or (2) he has been determined by an examiner to have lost his eligibility to vote under State law not inconsistent with the Constitution and the laws of the United States.

Sec. 8. Whenever an examiner is serving under this Act in any political subdivision, the Civil Service Commission may assign, at the request of the Attorney General, one or more persons, who may be officers of the United States, (1) to enter and attend at any place for holding an election in such subdivision for the purpose of observing whether persons who are entitled to vote are being permitted to vote, and (2) to enter and attend at any place for tabulating the votes cast at any election held in such subdivision

for the purpose of observing whether votes cast by persons entitled to vote are being properly tabulated. Such persons so assigned shall report to an examiner appointed for such political subdivision, to the Attorney General, and if the appointment of examiners has been authorized pursuant to section 3(a), to the court.

Sec. 9. (a) Any challenge to a listing on an eligibility list prepared by an examiner shall be heard and determined by a hearing officer appointed by and responsible to the Civil Service Commission and under such rules as the Commission shall by regulation prescribe. Such challenge shall be entertained only if filed at such office within the State as the Civil Service Commission shall by regulation designate, and within ten days after the listing of the challenged person is made available for public inspection, and if supported by (1) the affidavits of at least two persons having personal knowledge of the facts constituting grounds for the challenge, and (2) a certification that a copy of the challenge and affidavits have been served by mail or in person upon the person challenged at his place of residence set out in the application. Such challenge shall be determined within fifteen days after it has been filed. A petition for review of the decision of the hearing officer may be filed in the United Statese court of appeals for the circuit in which the person challenged resides within fifteen days after service of such decision by mail on the person petitioning for review but no decision of a hearing officer shall be reversed unless clearly erroneous. Any person listed shall be entitled and allowed to vote pending final determination by the hearing officer and by the court.

(b) The times, places, procedures, and form for application and listing pursuant to this Act and removals from the eligibility lists shall be prescribed by regulations promulgated by the Civil Service Commission and the Commission shall, after consultation with the Attorney General, instruct examiners concerning applicable State law not inconsistent with the Constitution and laws of the United

States with respect to (1) the qualifications required for listing, and (2) loss of eligibility to vote.

(c) Upon the request of the applicant or the challenger or on its own motion the Civil Service Commission shall have the power to require by subpoena the attendance and testimony of witnesses and the production of documentary evidence relating to any matter pending before it under the authority of this section. In case of contumacy or refusal to obey a subpena, any district court of the United States or the United States court of any territory or possession, or the District Court of the United States for the District of Columbia, within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or is domiciled or transacts business, or has appointed an agent for receipt of service of process, upon application by the Attorney General of the United States shall have jurisdiction to issue to such person an order requiring such person to appear before the Commission or a hearing officer, there to produce pertinent, relevant, and nonprivileged documentary evidence if so ordered, or there to give testimony touching the matter under investigation; and any failure to obey such order of the court may be punished by said court as a contempt thereof.

Sec. 10. (a) The Congress finds that the requirement of the payment of a poll tax as a precondition to voting (i) precludes persons of limited means from voting or imposes unreasonable financial hardship upon such persons as a precondition to their exercise of the franchise, (ii) does not bear a reasonable relationship to any legitimate State interest in the conduct of elections, and (iii) in some areas has the purpose or effect of denying persons the right to vote because of race or color. Upon the basis of these findings, Congress declares that the constitutional right of citizens to vote is denied or abridged in some areas by the requirement of the payment of a poll tax as a precondition to voting.

(b) In the exercise of the powers of Congress under section 5 of the fourteenth amendment and section 2 of the

fifteenth amendment, the Attorney General is authorized and directed to institute forthwith in the name of the United States such actions, including actions against States or political subdivisions, for declaratory judgment or injunctive relief against the enforcement of any requirement of the payment of a poll tax as a precondition to voting, or substitute therefor enacted after November 1, 1964, as will be necessary to implement the declaration of subsection (a) and the purposes of this section.

(c) The district courts of the United States shall have jurisdiction of such actions which shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of title 28 of the United States Code and any appeal shall lie to the Supreme Court. It shall be the duty of the judges designated to hear the case to assign the case for hearing at the earliest practicable date, to participate in the hearing and determination thereof, and to cause the case to be in every way expedited.

(d) During the pendency of such actions, and thereafter if the courts, notwithstanding this action by the Congress, should declare the requirement of the payment of a poll tax to be constitutional, no citizen of the United States who is a resident of a State or political subdivision with respect to which determinations have been made under subsection 4(b) and a declaratory judgment has not been entered under subsection 4(a), during the first year he becomes otherwise entitled to vote by reason of registration by State or local officials or listing by an examiner, shall be denied the right to vote for failure to pay a poll tax if he tenders payment of such tax for the current year to an examiner or to the appropriate State or local official at least forty-five days prior to election, whether or not such tender would be timely or adequate under State law. An examiner shall have authority to accept such payment from any person authorized by this Act to make an application for listing, and shall issue a receipt for such payment. The examiner shall transmit promptly any such poll tax payment to the office of the State or local official authorized to receive such

payment under State law, together with the name and address of the applicant.

Sec. 11. (a) No person acting under color of law shall fail or refuse to permit any person to vote who is entitled to vote under any provision of this Act or is otherwise qualified to vote, or willfully fail or refuse to tabulate, count, and report such person's vote.

(b) No person, whether acting under color of law or otherwise, shall intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person for voting or attempting to vote, or intimdiate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person for urging or aiding any person to vote or attempt to vote, or intimidate, threaten, or coerce any person for exercising any power or duties under section 3(a), 6, 8, 9, 10, or 12(e).

(c) Whoever knowingly or willfully gives false information as to his name, address, or period of residence in the voting district for the purpose of establishing his eligibility to register or vote, or conspires with another individual for the purpose of encouraging his false registration to vote or illegal voting, or pays or offers to pay or accepts payment either for registration to vote or for voting shall be fined not more than $10,000 or imprisoned not more than five years, or both: *Provided, however,* That this provision shall be applicable only to general, special, or primary elections held solely or in part for the purpose of selecting or electing any candidate for the office of President, Vice President, presidential elector, Member of the United States Senate, Member of the United States House of Representatives, or Delegates or Commissioners from the territories or possessions, or Resident Commissioner of the Commonwealth of Puerto Rico.

(d) Whoever, in any matter within the jurisdiction of an examiner or hearing officer knowingly and willfully falsifies or conceals a material fact,, or makes any false, fictitious, or fraudulent statements or representations, or makes or uses any false writing or document knowing the

same to contain any false, fictitious, or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both.

Sec. 12. (a) Whoever shall deprive or attempt to deprive any person of any right secured by section 2, 3, 4, 5, 7, or 10 or shall violate section 11 (a) or (b), shall be fined not more than $5,000, or imprisoned not more than five years, or both.

(b) Whoever, within a year following an election in a political subdivision in which an examiner has been appointed (1) destroys, defaces, mutilates, or otherwise alters the marking of a paper ballot which has been cast in such election, or (2) alters any official record of voting in such election tabulated from a voting machine or otherwise, shall be fined not more than $5,000, or imprisoned not more than five years, or both.

(c) Whoever conspires to violate the provisions of subsection (a) or (b) of this section, or interferes with any right secured by section 2, 3, 4, 5, 7, 10 or 11 (a) or (b) shall be fined not more than $5,000, or imprisoned not more than five years, or both.

(d) Whenever any person has engaged or there are reasonable grounds to believe that any person is about to engage in any act or practice prohibited by section 2, 3, 4, 5, 7, 10, 11, or subsection (b) of this section, the Attorney General may institute for the United States, or in the name of the United States, an action for preventive relief, including an application for a temporary or permanent injunction, restraining order, or other order, and including an order directed to the State and State or local election officials to require them (1) to permit persons listed under this Act to vote and (2) to count such votes.

(e) Whenever in any political subdivision in which there are examiners appointed pursuant to this Act any persons allege to such an examiner within forty-eight hours after the closing of the polls that notwithstanding (1) their listing under this Act or registration by an appropriate election official and (2) their eligibility to vote, they have not

been permitted to vote in such election, the examiner shall forthwith notify the Attorney General if such allegations in his opinion appear to be well founded. Upon receipt of such notification, the Attorney General may forthwith file with the district court an application for an order providing for the marking, casting, and counting of the ballots of such persons and requiring the inclusion of their votes in the total vote before the results of such election shall be deemed final and any force or effect given thereto. The district court shall hear and determine such matters immediately after the filing of such application. The remedy provided in this subsection shall not preclude any remedy available under State or Federal law.

(f) The district courts of the United States shall have jurisdiction of proceedings instituted pursuant to this section and shall exercise the same without regard to whether a person asserting rights under the provisions of this Act shall have exhausted any administrative or other remedies that may be provided by law.

Sec. 13. Listing procedures shall be terminated in any political subdivision of any State (a) with respect to examiners appointed pursuant to clause (b) of section 6 whenever the Attorney General notifies the Civil Service Commission, or whenever the District Court for the District of Columbia determines in an action for declaratory judgment brought by any political subdivision with respect to which the Director of the Census has determined that more than 50 per centum of the nonwhite persons of voting age residing therein are registered to vote, (1) that all persons listed by an examiner for such subdivision have been placed on the appropriate voting registration roll, and (2) that there is no longer reasonable cause to believe that persons will be deprived of or denied the right to vote on account of race or color in such subdivision, and (b), with respect to examiners appointed pursuant to section 3(a), upon order of the authorizing court. A political subdivision may petition the Attorney General for the termination of listing procedures under clause (a) of this section, and may peti-

tion the Attorney General to request the Director of the Census to take such survey or census as may be appropriate for the making of the determination provided for in this section. The District Court for the District of Columbia shall have jurisdiction to require such survey or census to be made by the Director of the Census and it shall require him to do so if it deems the Attorney General's refusal to request such survey or census to be arbitrary or unreasonable.

Sec. 14. (a) All cases of criminal contempt arising under the provisions of this Act shall be governed by section 151 of the Civil Rights Act of 1957 (42 U.S.C. 1995).

(b) No court other than the District Court for the District of Columbia or a court of appeals in any proceeding under section 9 shall have jurisdiction to issue any declaratory judgment pursuant to section 4 or section 5 or any restraining order or temporary or permanent injunction against the execution or enforcement of any provision of this Act or any action of any Federal officer or employee pursuant hereto.

(c) (1) The terms "vote" or "voting" shall include all action necessary to make a vote effective in any primary, special, or general election, including, but not limited to, registration, listing pursuant to this Act, or other action required by law prerequisite to voting, casting a ballot, and having such ballot counted properly and included in the appropriate totals of votes cast with respect to candidates for public or party office and propositions for which votes are received in an election.

(2) The term "political subdivision" shall mean any county or parish, except that where registration for voting is not conducted under the supervision of a county or parish, the term shall include any other subdivision of a State which conducts registration for voting.

(d) In any action for a declaratory judgment brought pursuant to section 4 or section 5 of this Act, subpenas for witnesses who are required to attend the District Court

for the District of Columbia may be served in any judicial district of the United States: *Provided*, That no writ of subpena shall issue for witnesses without the District of Columbia at a greater distance than one hundred miles from the place of holding court without the permission of the District Court for the District of Columbia being first had upon proper application and cause shown.

Sec. 15. Section 2004 of the Revised Statutes (42 U.S.C. 1971), as amended by section 131 of the Civil Rights Act of 1957 (71 Stat. 637), and amended by section 601 of the Civil Rights Act of 1960 (74 Stat. 90), and as further amended by section 101 of the Civil Rights Act of 1964 (78 Stat. 241), is further amended as follows:

(a) Delete the word "Federal" wherever it appears in subsections (a) and (c);

(b) Repeal subsection (f) and designate the present subsections (g) and (h) as (f) and (g), respectively.

Sec. 16. The Attorney General and the Secretary of Defense, jointly, shall make a full and complete study to determine whether, under the laws or practices of any State or States, there are preconditions to voting, which might tend to result in discrimination against citizens serving in the Armed Forces of the United States seeking to vote. Such officials shall, jointly, make a report to the Congress not later than June 30, 1966, containing the results of such study, together with a list of any States in which such preconditions exist, and shall include in such report such recommendations for legislation as they deem advisable to prevent discrimination in voting against citizens serving in the Armed Forces of the United States.

Sec. 17. Nothing in this Act shall be construed to deny, impair, or otherwise adversely affect the right to vote of any person registered to vote under the law of any State or political subdivision.

Sec. 18. There are hereby authorized to be appropriated such sums as are necessary to carry out the provisions of this Act.

Sec. 19. If any provision of this Act or the application thereof to any person or circumstances is held invalid, the remainder of the Act and the application of the provision to other persons not similarly situated or to other circumstances shall not be affected thereby.

Approved August 6, 1965.